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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91226310
Party	Defendant Digital Reception Services, Inc. dba DRS
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Date	04/29/2016
Attachments	BOF Notice of Opposition - 4-29-16.pdf(5464960 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BOF EARTH WATER, LLC

Opposer,

MEGAWATERSHED
(Serial No. 86812763)

v.

KEVIN MULLIGAN

Applicant.

NOTICE OF OPPOSITION

Opposer BOF Earth Water, LLC, (“BOF”), believes it will be damaged by the registration of the mark MEGAWATERSHED, in Application Serial No. 86812763, and opposes the application pursuant to 15 U.S.C. § 1063 and 37 C.F.R. §§ 2.101, 2.104(a). The common law Megawatershed Mark has been used in commerce since approximately 1987 to describe large bodies of water contained in the Earth’s crust, as well as the process for procuring and distributing that water. BOF acquired a lien and security interest in the Megawatershed Mark pursuant to an agreement with Earthwater Technologies, Inc., and Earthwater Resources, LLC (together, “Earthwater”), the rightful owners of the Mark. Applicant is fully aware of Earthwater’s rights in the Megawatershed Mark because he has worked directly with Earthwater and signed a confidentiality agreement relative to the Megawatershed Mark and associated technology. Despite this, Applicant has hired several of Earthwater’s key employees in violation of their non-compete agreements, stolen Earthwater’s trade secrets in violation of a confidentiality agreement, and is attempting to procure its MEGAWATERSHED Mark by committing a fraud on the Trademark Office. Applicant’s fraudulent and tortious conduct cannot stand, and his application for the MEGAWATERSHED Mark should be denied.

THE COMMON LAW MEGAWATERSHED MARK AND BOF

1. Below is a brief history of the creation of the Megawatershed Mark and how BOF has obtained an interest in it.

I. The discovery of the Megawatershed and development of the Megawatershed technology.

2. Robert Bisson coined the phrase Megawatershed to describe large bodies of water located deep in the Earth's crust that he discovered in 1987 while exploring the Great Rift Systems of East Africa. Following this discovery, Mr. Bison developed a complex system for procuring and distributing that water with the stated end-goal of providing large-scale, sustainable water supplies to areas in dire need.

3. During the years that followed, Mr. Bisson spent considerable time, resources and energy promoting and advertising his discovery of the Megawatershed and the associated technology. In 2004, Mr. Bisson published a book titled *Modern Groundwater Exploration*,¹ which detailed the success his innovative Megawatershed concept enjoyed in evaluating, developing, and managing previously undiscovered, massive, sustainable groundwater resources. Mr. Bisson and the Megawatershed technology were also covered extensively in the media, including by Mother Jones² and the popular water blog, Aguanomics.³

4. As a result of these efforts, the term Megawatershed and its associated technology became synonymous with Mr. Bisson. Indeed, he discovered the water, coined the term used to describe that water, and invented the technology needed to extract that water at large scale levels. Thus, while Mr. Bisson never registered a federal trademark for the term Megawatershed, it

¹ Robert A. Bisson, Jay H. Lehr, *Modern Groundwater Exploration*, (July 2004).

² Bruce Falconer, *The Wizard of H2O* (April 19, 2016, 9:49 AM), <http://www.motherjones.com/environment/2008/11/wizard-h2o>.

³ David Zetland, *Megawatersheds* (April 19, 2016 10:42 AM), <http://www.aguanomics.com/2009/04/megawatersheds.html>.

became a common law trademark used to identify the water that he discovered and technology that he invented to extract that water.

II. Assignment of interest in the Megawatershed Mark to Earthwater.

5. On August 30, 2010, Mr. Bisson executed an Assignment of Intellectual Property Agreement with Earthwater (the “IP Agreement”). Pursuant to the IP Agreement, Mr. Bisson assigned to Earthwater all ideas, concepts, discoveries, inventions and other property relating to his business, including the rights to use his common law Megawatershed Mark. A copy of the IP Agreement is attached as **Exhibit A**.

6. Since August 30, 2010, Earthwater has carried the mantle for Mr. Bisson, continuing his efforts to promote and advertise the Megawatershed Mark and associated technology. To that end, Earthwater maintains a website, <http://www.etiwater.com>, which provides consumers and the public at large with extensive information relative to the Megawatershed Mark, the associated technology, and the success that this revolutionary concept has enjoyed.

7. The Megawatershed Mark has attained a high degree of recognition and distinctiveness throughout the United States, symbolic of the extensive goodwill and consumer recognition built up by the joint efforts of Mr. Bisson and Earthwater. Purchasers and prospective purchasers, as well as other members of the public, are familiar with the Megawatershed Mark and associate it with Earthwater’s high quality products and services in the water extraction and distribution industry.

III. BOF acquires a security interest and lien in the Megawatershed Mark.

8. BOF is a corporation organized under the laws of the State of Delaware.

9. On November 4, 2013, BOF loaned Earthwater money for the development of water production and distribution capabilities. In return, Earthwater executed a Security Agreement on that same day which provided BOF with a lien and security interest in all of the assets of Earthwater, including all intellectual property and contracts with third parties. A copy of this Security Agreement is attached as **Exhibit B**.

10. Pursuant to the Security Agreement, Earthwater irrevocably appointed BOF as its true and lawful attorney-in-fact with full power and authority to protect Earthwater's assets, including the Megawatershed Mark. (*See id.*)

11. Thus, BOF, as Earthwater's attorney-in-fact, has standing to oppose the application for the MEGAWATERSHED Mark.

APPLICANT, POWER 7 AND THE MEGAWATERSHED MARK

12. Upon information and belief, Applicant is a resident of the state of New Hampshire.

13. Applicant created or is otherwise affiliated with an entity named Power 7, which competes directly with Earthwater in the water extraction and distribution industry.

14. Despite being competitors, Power 7 and Earthwater developed a business relationship whereby Earthwater gave Power 7 access to its confidential and proprietary information, including its Megawatershed Mark and technology. In connection with that business relationship, Power 7 and Earthwater entered into a Non-Disclosure and Confidentiality Agreement on June 18, 2015 (the "Confidentiality Agreement"). A copy of the Confidentiality Agreement is attached as **Exhibit C**. In the Confidentiality Agreement, Power 7 agreed that, for a period of five years, it would not use or disclose any of Earthwater's confidential information,

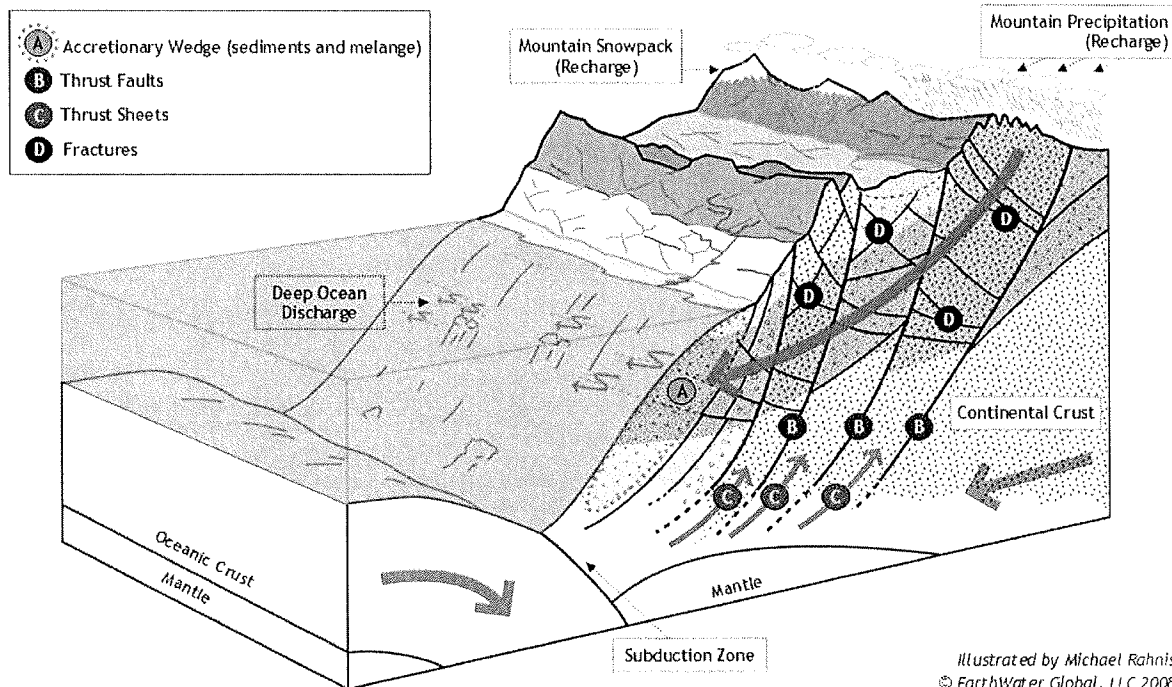
including Earthwater's intellectual property rights. Importantly, Applicant himself signed this agreement on Power 7's behalf. (*See id.*)

15. Unbeknownst to Earthwater, Power 7 had devised a scheme to steal Earthwater's clients, employees, and confidential and proprietary information, including its Megawatershed Mark and technology. Power 7 hired several former employees of Earthwater, including Stacey Sosenko, Woldai Ghebreab, Candace Grandpre and Robert Walter (the "Former Employees"). The Former Employees immediately began helping Power 7 steal Earthwater's customers and reverse engineer Earthwater's Megawatershed Mark and technology, in violation of their employment contracts with Earthwater.

16. Moreover, on November 7, 2015, just **four months** after signing the Confidentiality Agreement and gaining access to Earthwater's confidential and proprietary information relative to the Megawatershed Mark, Applicant filed Application Serial No. 86812763 to register the mark MEGAWATERSHED for "Bottled artesian water; Bottled drinking water; Bottled water" in International Class 32 and "Utility services, namely, providing water and sewer services" in International Class 39 (the "Application").

17. Power 7 now operates a website, <https://power7water.com/>, which specifically references the term "Megawatershed," and misrepresents to the public the "Megawatershed" process is owned by and exclusive to Power 7. (*See Composite D.*) On its website, Power 7 prominently displays information that it stole from Earthwater:

Megawatershed™ Components



18. This picture illustrates the Megawatershed phenomenon as discovered by Mr. Bisson. On the lower right hand corner, the illustration is credited to Michael Rahnis, of *Earthwater Global, LLC*, which is the predecessor-in-interest to Earthwater. Earthwater Global, LLC is also named as the holder of copyright to the illustration.

19. BOF has sent cease and desist letters to Applicant and the Former Employees, which they have ignored. (See **Composite Exhibit E.**)

20. The Application for Applicant's Mark was first published for opposition in the Official Gazette dated April 12, 2016. BOF has timely filed its Notice of Opposition on April 29, 2016.

PRIORITY AND CONSUMER CONFUSION

21. BOF will be damaged by the registration of the Applicant's Mark because: (1) BOF, through Earthwater and Mr. Bisson, has priority of use; and (2) Applicant's MEGAWATERSHED mark, as applied to their services, so resembles the Megawatershed mark as to be likely to cause confusion, mistake or deception. *Sharethis, Inc.*, 91209951, 2015 WL 9906328, at *4 (Jan. 2, 2015).

22. The first factor, priority of use, is undeniably satisfied. Mr. Bisson first used the Megawatershed Mark in commerce in 1987, 28 years before Applicant filed the present application.

23. The second factor, consumer confusion, is a foregone conclusion. Applicant's MEGAWATERSHED Mark is *identical* to BOF's Megawatershed Mark. In addition to the identical nature of the parties' marks, the application for Applicant's Mark covers services identical or highly similar to those used by Earthwater and Mr. Bisson under the Megawatershed Mark – i.e., the procurement and distribution of water located in the Earth's crust.

24. Given the above, consumers are likely to believe that Applicant's services, offered under the identical mark, is licensed, endorsed, or otherwise associated with Earthwater. Registration of Applicant's MEGAWATERSHED Mark on the Principal Register will be inconsistent with Earthwater's rights in the Megawatershed Mark and cause irreparable harm to Earthwater's reputation and goodwill.

FRAUD

25. Applicant has committed a fraud in applying for the MEGAWATERSHED Mark by knowingly making a false, material representation of fact with the intent to deceive the USPTO in order to obtain a registration to which he is otherwise not entitled. *See In re Bose*

Corp., 476 F.3d 1331, 91 USPQ2d 1938, 1939-1940 (Fed. Cir. 2009); and *Torres v. Cantine Torresella S.r.L.*, 808 F.2d 46, 1 USPQ2d 1483, 1484 (Fed. Cir. 1986).

26. When Applicant submitted the Application for the MEGAWATERSHED Mark, he declared that

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), **the applicant is the owner of the trademark/service mark** sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), **the applicant is entitled to use the mark in commerce**; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. **The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce**, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, **declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.**

(emphasis added). Applicant could not have signed this Declaration in good faith. As detailed above, Applicant was fully aware of Earthwater's longstanding use, rights and interests in the Megawatershed Mark and associated technology because he worked directly with Earthwater using this technology. Pursuant to that relationship, Applicant signed the Confidentiality Agreement on Power 7's behalf, which expressly stated that Earthwater was the exclusive owner of its intellectual property, that the terms of the Confidentiality Agreement did not convey to Power 7 an ownership interest in Earthwater's intellectual property, and that Power 7 was not granted a license to that intellectual property. (See **Exhibit C.**)

27. Despite this, Applicant has filed this Application seeking to use the *identical* mark for *identical* products and services. This leads to the inescapable conclusion that Applicant has knowingly withheld information from the USPTO that is material to the Application – i.e., that Earthwater is the rightful owner of the Megawatershed Mark.

28. Because of Applicant's fraudulent conduct, its Application for the MEGAWATERSHED Mark should be denied.

The required opposition filing fee is being submitted electronically with this Notice of Opposition.

WHEREFORE, BOF prays that this opposition be sustained and that registration of Application No. 86812763 be denied because BOF has priority in the Megawatershed Mark, the Applicant's Mark is confusingly similar to the Megawatershed Mark, and Applicant has committed a fraud on the USPTO in seeking to obtain its Mark.

Dated: April 29, 2016

s/ Patrick M. Causey
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Attorneys for BOF Earthwater, LLC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BOF EARTH WATER, LLC

Opposer,

MEGAWATERSHED
(Serial No. 86812763)

v.

KEVIN MULLIGAN

Applicant.

_____ /

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on Applicant on April 29, 2016 via first class mail and email to:

John Salcido
RAJ Abhyanker, P.C.
451 N. Shoreline Blvd.
Mountain View, California, 94043
trademarks@legalforce.com

CERTIFICATE OF TRANSMITTAL

I certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION is being filed electronically with the TTAB via ESTTA on April 29, 2016.

/s/ Patrick M. Causey
Counsel for Opposer

EarthWater Resources Inc.

FOUNDER'S
ASSIGNMENT OF INTELLECTUAL PROPERTY AGREEMENT

FOUNDER'S COMMON STOCK SUBSCRIPTION *and* ASSIGNMENT OF INTELLECTUAL PROPERTY AGREEMENT dated as of the *30th day of August, 2010*, by and between EarthWater Resources Inc., a Delaware corporation (the "Company"), and Robert Bisson (the "Founder").

WITNESSETH

WHEREAS, the Founder has performed research and development work and has made, developed or authored ideas, concepts, discoveries, inventions and other tangible and intangible property (collectively, the "Proprietary Information and Technology") relating to the business of the Company, including the development and creation of intellectual property relating to the exploration and production of groundwater from fractured and bedrock formations ("Business") and specifically including the intellectual property with respect thereto, that reverted to Founder upon dissolution of Earthwater Global, LLC, a Delaware limited liability company on or about July 2, 2010, including the rights to use the term "Megawatershed" in the Business; and

WHEREAS, the Company desires to acquire all right, title and interest to such Proprietary Information and Technology now owned or controlled by the Founder and the Founder desire to transfer the same to the Company in exchange for shares of Common Stock of the Company;

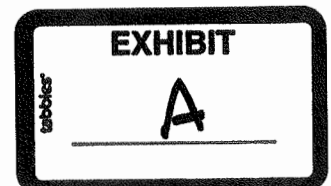
NOW, THEREFORE, the parties do hereby agree as follows:

1. Assignment of Rights. The Founder hereby assigns to the Company his entire right, title and interest in and to all Proprietary Information and Technology now owned or controlled by the Founder related to the Business in exchange for \$300,000.00, payable as hereinafter provided.

2. Representations by Founder. The Founder hereby represents and warrants to the Company that he has all right, title and interest to the Proprietary Information and Technology developed by him and assigned to the Company under this Agreement, and with respect to Proprietary Information and Technology of Earthwater Technology, Inc., he is authorized by Earthwater Technology, Inc. to make such assignment in each case free and clear of any liens, claims, security interests, encumbrances or interests of any kind (or of any third party).

3. Further Assurances. The Founder hereby agrees (i) to execute and deliver to the Company at its request all further papers relating to the Proprietary Information and Technology to be assigned by him to the Company hereunder, including but not limited to trademark, patent or copyright applications, registrations and assignments; (ii) to make available to the Company at its request all documentation (in whatever form) relating to such Proprietary Information and Technology, and (iii) to assist the Company in reducing all algorithms and protocols with respect to the Business to a standardized risk matrix.

4. Technical Assistance, Assignment of Inventions. In order to enable the Company to enjoy fully the rights granted to it hereunder, the Founder agrees that he shall, from time to time at the request of the Company, provide the Company with technical assistance as to the Proprietary Information and



Technology assigned by him to the Company hereunder. As to all rights to the Proprietary Information and Technology assigned by the Founder to the Company pursuant to this Agreement, the Founder will, at the request and expense of the Company, sign, execute, make and do all such deeds, documents, acts and things as the Company may reasonably require: (a) to apply for, obtain and vest in the name of the Company alone, if possible (unless the Company otherwise directs), letters patent, trademarks, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and (b) to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, trademarks, copyright or other analogous protection.

In the event the Company is unable, after reasonable effort, to secure the Founder's signature on any patent application, trademarks, copyright or other analogous protection relating to an invention or discovery, the Founder hereby designates and appoints the Company as a duly authorized officer and agent as his agent and attorney-in-fact, to act for and on his behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, trademarks, copyright or other analogous protection thereon with the same legal force and effect as if executed by the Founder.

5. **Assignment of Improvements.** All right, title and interest to all updates, improvements and developments of the Proprietary Information and Technology to be assigned by the Founder to the Company hereunder, that are made, owned, acquired or controlled by the Founder at any time after the date of this Agreement, shall be similarly assigned by the Founder to the Company at the request of the latter and shall be deemed to be "*Proprietary Information and Technology*" for purposes of this Agreement.

6. **Transfer of Intangible Property.** The Founder hereby transfer to the Company his entire right, title and interest in and to all intangible property relating to the Proprietary Information and Technology and further listed on **Exhibit A** hereto.

7. **Payment.** In full consideration for the assignment of the Proprietary Information and Technology to the Company, the Company agrees to pay Founder \$300,000.00 in monthly installments of \$12,500.00 beginning September 1, 2010 and ending August 1, 2012.

8. **Default in Payment Obligations.** The Company shall be in default hereunder if it fails to make a payment to Founder required pursuant to Paragraph seven (7) within twenty (20) days after written notice to the Company and the opportunity by the Company to satisfy all past-due obligations to Founder. At any time after such default, Founder may, by written notice to the Company, terminate this Agreement and all Proprietary Information and Technology transferred hereunder to the Company shall revert to Founder and the Company shall thereafter have no rights in or authority to practice the Proprietary Information and Technology.

9. **Default by Founder.** Founder shall be in default if Founder fails to perform its obligations to the Company pursuant to Paragraphs three (3) or four (4) hereof, within twenty (20) days after written notice of such failure to Founder (or such longer period as reasonably necessary if such failure cannot be cured within twenty (20) days, provided Founder promptly commences and diligently pursues such cure). Upon such default, Company shall be entitled to enforce all remedies against Founder under applicable law.

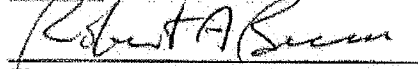
10. **Miscellaneous.** No failure or delay on the part of either party in exercising any right, power or remedy hereunder shall operate as a waiver thereof. The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. No modification, amendment, termination, waiver or consent under this Agreement shall be valid unless evidence by a writing signed by the party against whom any of the foregoing actions is sought to be enforced. This Agreement constitutes the entire agreement between the parties and supersedes all prior proposals and agreements, written or oral, and all other communications between the parties relating to the subject matter of this Agreement. The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity, legality of enforceability of any other provision, and this Agreement shall be construed and reformed to the maximum extent possible to give effect to the essential purpose and intent of this agreement. This Agreement shall be binding upon and inure to the benefit of the Company and the Founder and his respective successors and assigns. All notices hereunder shall be in writing and shall be deemed given when sent by overnight courier service, personal delivery or electronic facsimile transmission. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed as an instrument under seal as of the date and year first above written.

EarthWater Resources Inc.

By: _____
Richard C. Jackson

Founder: ROBERT BISSON


Signature

Title: Chief Executive Officer

EXHIBIT A: Description of Contributed Proprietary Information and Technology

The Founder has contributed the following tangible and intangible property to the Company:

1. Tangible and Intangible Property and Past Services. All case studies, maps, technical reports, data and evaluations relating to the Business whether prepared by Founder for Earthwater Technologies, Inc., ("ETI") Earthwater Global, LLC, or predecessor or affiliated companies; work-in-process, bids, memoranda of understanding, proposals, authorizations and non-disclosure agreements relating to the Business, whether prepared by Founder for ETI, Earthwater Global, LLC or predecessor or affiliated companies; the right to use and claim prior performance under contracts by all predecessor and affiliated companies; provided, however, nothing contained herein shall obligate Founder to assign or transfer any such assets sold or assigned by Earthwater Global, LLC to any third parties.; and

2. Contribution of Proprietary Information and Technology ideas, concepts, discoveries, inventions, trade secrets, cost data, historical information, track record and know how relating to exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers and economic and business models relating to such development. Proprietary Information and Technology specifically include all items within these categories referenced or covered in the September 17, 2010 letter from Wilensky & Jones, LLP, on behalf of Founder and ETI to Thomas Grimm as Trustee, pursuant to C.A. No 5520-VCL, Court of Chancery, State of Delaware.

The foregoing property, as *Proprietary Information and Technology* listed in item #2, includes all the intellectual property owned by the Founder relating to the Business, and including all of the following intangible property relating thereto: (A) patents, patent applications, patent disclosures and all related continuation, continuations-in-part, divisional, reissue, reexamination, utility model, certificate of invention and design patents, patent applications, registrations and applications for registrations; (B) trademarks, service marks, trade dress, Internet domain names, logos, trade names and corporate names and registrations and applications for registration thereof; (C) copyrights and registrations and applications for registration thereof; (D) mask works and registrations and applications for registration thereof; (E) computer software, algorithms, methodologies, flow charts, logic diagrams, data and documentation; (F) inventions, trade secrets and confidential business information, whether patentable or non-patentable and whether or not reduced to practice, know-how, manufacturing and product processes and techniques, research and development information, copyrightable works, financial, marketing and business data, laboratory notebooks, formulae, diagrams, technical and engineering specifications, pricing and cost information, business and marketing plans and customer and supplier lists and information; (G) other proprietary rights relating to any of the foregoing (including remedies against infringements thereof and rights of protection of interest therein under the laws of all jurisdictions); and (H) copies and tangible embodiments thereof.

SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of November 4, 2013 (the "Security Agreement"), made by each party listed on Schedule I hereto (together with each Person which may, from time to time, become party hereto as a Grantor, each a "Grantor", collectively, the "Grantors"), in favor of BOF EARTH WATER LLC, a Delaware limited liability company (the "Lender").

RECITALS

WHEREAS, pursuant to the Loan Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and among EARTHWATER RESOURCES, LLC, a Delaware limited liability company ("EW Resources"), and EARTHWATER TECHNOLOGIES, INC. ("EW Technologies"), and together with EW Resources, the "Borrowers"), and the Lender, the Lender has agreed to make loans to the Borrowers upon the terms and subject to the conditions set forth therein; and

WHEREAS, it is a condition precedent to the obligation of the Lender to make loans to the Borrowers under the Loan Agreement that the Borrowers and each Guarantor shall have executed and delivered this Security Agreement to, and for the benefit of, the Lender.

NOW, THEREFORE, in consideration of the premises and to induce the Lender to enter into the Loan Agreement and to induce the Lender to make loans to the Borrowers under the Loan Agreement, and for other good, fair and valuable consideration and reasonably equivalent value, the receipt and sufficiency of which are hereby acknowledged by each Grantor, each Grantor hereby agrees with the Lender as follows:

1. Defined Terms.

(a) Unless otherwise defined herein, capitalized terms which are defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement; the following terms which are defined in the UCC are used herein as so defined: Account Debtor, Accounts, Certificated Security, Chattel Paper, Commercial Tort Claims, Commodity Account, Documents, Equipment, Farm Products, General Intangibles, Goods, Instruments, Inventory, Investment Property, Letter-of-Credit Rights, Payment Intangibles, Proceeds, Securities Account and Supporting Obligations; and the following terms shall have the following meanings:

"Account Control Agreement": (i) with respect to any Deposit Account, a control agreement in a form satisfactory to the Lender, as amended, supplemented or otherwise modified from time to time; (ii) with respect to any Securities Account, a control agreement in a form satisfactory to the Lender, as amended, supplemented or otherwise modified from time to time; and (iii) with respect to any Commodity Account, a control agreement in a form satisfactory to the Lender, as amended, supplemented or otherwise modified from time to time.

"Account Transaction": as defined in Section 5(j).

"Borrowers": as defined in the Recitals hereto.

"Collateral": as defined in Section 2 of this Security Agreement.



“Collateral Account”: any collateral account established by the Lender as provided in Section 8 of this Security Agreement.

“Lender”: as defined in the Preamble hereto.

“Contract”: any contract to which a Pledgor is a party, other than the Loan Documents.

“Controlled Account”: each Pledged Account that is subject to an Account Control Agreement.

“Copyrights”: as defined in the definition of “Intellectual Property” in this Section 1(a).

“Deposit Account”: a “deposit account” as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including, without limitation, any demand, time, savings, passbook or like account maintained with any depository institution.

“Excluded Assets”: (i) Capital Stock of any Subsidiary that is not an Applicable Subsidiary and is not pledged or required to be pledged pursuant to the Pledge Agreement; and (ii) any Contractual Obligation, General Intangible, Account or Intellectual Property License (any thereof, an “Intangible Asset”), to the extent that the grant of a security interest therein pursuant to this Security Agreement (A) is prohibited by any contract, agreement, instrument or indenture evidencing or governing such Intangible Asset, (B) would terminate such Intangible Asset or give any other party thereto or to any such contract, agreement, instrument or indenture the right to terminate such Intangible Asset or such party’s obligations under any such contract, agreement, instrument or indenture, (C) is permitted only with the consent of any other Person, which consent has not been obtained, or (D) would result in, or require, the creation of any Lien on any portion of the Collateral pursuant to the terms of any contract, agreement, instrument or indenture evidencing or governing any Indebtedness of any Loan Party or (E) is prohibited under any contract, agreement, instrument or indenture creating or governing a Permitted Lien, but only, in the case of each of sub-clauses (A) through (E) of this clause (ii), to the extent that any such prohibition, limitation or restriction would be effective under applicable law (including, without limitation, as provided under Sections 9-406 and 9-408 of the UCC).

“Grantors”: as defined in the Preamble hereto.

“Grantor’s Intellectual Property”: at any time, with respect to any Grantor, all Intellectual Property used (but not owned) or licensed by such Grantor at such time.

“Incidental Rights”: (a) all books and records relating to the Collateral, (b) all indemnities, guaranties or warranties relating to any type of the Collateral to the extent a security interest is permitted to be granted therein pursuant to the UCC and (c) all governmental filings, permits, approvals or licenses relating to the ownership, use or occupancy of the Inventory that constitutes Collateral to the extent that (i) a security interest may be granted therein under applicable Law, (ii) the granting of a security interest therein would not result in the violation, termination, suspension or limitation thereof or otherwise violate applicable Law and (iii) the granting of a security interest therein would not require the prior approval of or prior notice to any Governmental Authority under applicable Law, which notice or approval has not been made or obtained.

“Intangible Asset”: as defined in the definition of “Excluded Assets” in this Section 1(a).

“Intellectual Property”: all (i) trademarks, collective marks, certification marks, trade names, corporate names, company names, business names, fictitious business names, domain names,

service marks, logos, brand names, trade dress, designs and all other source identifiers, and the rights in any of the foregoing which arise under applicable law, the goodwill of the business symbolized thereby or associated with each of them, all registrations and applications in connection therewith and all renewals of any of the foregoing, including registrations and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof (“Trademarks”); (ii) inventions and discoveries whether patentable or not, invention disclosures, patentable designs, all letters patent and design letters patent of the United States or any other country and all applications for letters patent or design letters patent of the United States or any other country, including applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, and all reissues, renewals, divisions, continuations, continuations in part, revisions and extensions of any of the foregoing (“Patents”); (iii) trade secrets or confidential information, including confidential technical and business information, know-how, show-how, processes, schematics, algorithms, concepts, ideas, inventions, business methods, research and development, formulae, drawings, prototypes, models, designs, customer and supplier information and lists, software, including source code, object code, user interface, or other confidential proprietary intellectual property, and all additions and improvements to, and books and records describing or used in connection with, any of the foregoing (“Trade Secrets”), (iv) all published and unpublished works of authorship whether copyrightable or not, databases and other compilations of information, software, including source code, object code, user interface, algorithms and the like, or other confidential proprietary intellectual property, and all additions and improvements to, and books and records describing or used in connection with, any of the foregoing, including user manuals and other training documentation related thereto, arising under the laws of the United States or any other country, all registrations and applications for copyrights under the laws of the United States or any other country, including registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, and all derivative works, renewals, extensions, restorations and reversions of any of the foregoing (“Copyrights”), (v) other intellectual property to the extent entitled to legal protection as such, including products under development and methodologies therefor, and (vi) all claims for, and rights to sue for, past, present or future infringement, misappropriation, dilution or other impairment or violation of any of the foregoing and all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing.

“Intellectual Property Licenses”: any and all agreements, whether written or oral, to which any Grantor is a party and pursuant to which (i) any third Person is granted a license to any Grantor’s Intellectual Property, or (ii) any Grantor is granted a license to any Intellectual Property of a third Person.

“Lender”: as defined in the Recitals hereto.

“Loan Agreement”: as defined in the Recitals hereto.

“Material Contracts”: the contracts and agreements listed on Schedule IV hereto, as the same may from time to time be amended, supplemented or otherwise modified, including, without limitation, (i) all rights of any Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of any Grantor to damages arising out of, or for, breach or default in respect thereof and (iii) all rights of any Grantor to perform and to exercise all remedies thereunder.

“Owned Intellectual Property”: at any time, with respect to any Grantor, all Intellectual Property owned by such Grantor at such time.

“Patents”: as defined in the definition of “Intellectual Property” in this Section 1(a).

"Permitted Liens": Liens permitted on the Collateral pursuant to the Loan Agreement.

"Pledged Accounts": all Commodity Accounts, Deposit Accounts and Securities Accounts of any Grantor.

"Receivable": any right to payment for goods sold, leased, licensed, assigned or otherwise disposed of or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including, without limitation, any Account).

"Security Agreement": this Security Agreement, as amended, supplemented or otherwise modified from time to time.

"Trade Secrets": as defined in the definition of "Intellectual Property" in this Section 1(a).

"Trademarks": as defined in the definition of "Intellectual Property" in this Section 1(a).

"UCC": the Uniform Commercial Code as from time to time in effect in the State of Delaware or, as the context requires, any other applicable jurisdiction.

"Vehicles": all cars, trucks, trailers, construction and earth moving equipment and other vehicles owned by any Grantor covered by a certificate of title law of any State hereto and all tires and other appurtenances to any of the foregoing.

(b) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import when used in this Security Agreement shall refer to this Security Agreement as a whole and not to any particular provision of this Security Agreement, and Section, Schedule, Annex and Exhibit references are to this Security Agreement unless otherwise specified.

(c) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

2. Grant of Security Interest. As collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations, each Grantor hereby grants to the Lender a security interest in all of the following property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "Collateral"):

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all Commercial Tort Claims described on Schedule VI hereto (as such Schedule VI may be from time to time supplemented pursuant to Section 5(1));
- (iv) all Commodity Accounts;
- (v) all Contracts;
- (vi) all Deposit Accounts;
- (vii) all Documents;
- (viii) all Equipment;
- (ix) all General Intangibles;
- (x) all Incidental Rights;

- (xi) all Instruments;
- (xii) all Intellectual Property and Intellectual Property Licenses;
- (xiii) all Inventory;
- (xiv) all Investment Property;
- (xv) all Letter-of-Credit Rights;
- (xvi) all Payment Intangibles
- (xvii) all Securities Accounts, and all Investment Property held therein or credited thereto;
- (xviii) all Vehicles;
- (xix) all Goods and other property not otherwise described above;
- (xx) all books and records pertaining to any and/or all of the Collateral; and
- (xxi) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing, all Supporting Obligations in respect of any of the foregoing, and all collateral security and guarantees given by any Person with respect to any of the foregoing;

provided, that the Collateral shall not include the Excluded Assets.

3. Certain Matters Respecting Receivables and Material Contracts.

(a) Grantors Remain Liable under Receivables and Material Contracts. Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Receivables and Material Contracts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to each such Receivable and in accordance with and pursuant to the terms and provisions of each such Material Contract. The Lender shall not have any obligation or liability under any Receivable (or any agreement giving rise thereto) or under any Material Contract by reason of or arising out of this Security Agreement or the receipt by the Lender of any payment relating to such Receivable or Material Contract pursuant hereto, nor shall the Lender be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto) or under or pursuant to any Material Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Receivable (or any agreement giving rise thereto) or under or pursuant to any Material Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(b) Communication with and Notice to Receivable Obligors and Contracting Parties. The Lender in its own name or in the name of any one or more of the Grantors may, at any time, communicate with Account Debtors on the Receivables and parties to the Material Contracts to verify with them to the Lender's satisfaction the existence, amount and terms of any such Receivables or Material Contracts. Each Grantor shall notify Account Debtors on the Receivables that the Receivables have been collaterally assigned to the Lender.

4. Representations and Warranties. Each Grantor hereby represents and warrants as of the Closing Date and each Borrowing Date that:

(a) Title; No Other Liens. Except for the Liens granted to the Lender pursuant to this Security Agreement and the other Permitted Liens, such Grantor owns each item of the Collateral pledged by it free and clear of any and all Liens or claims of others. No security agreement, financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in

any public office, except such as may have been filed in favor of the Lender pursuant to this Security Agreement or as may be filed to secure a Permitted Lien.

(b) Perfected First Priority Liens. Upon the filing of UCC-1 financing statements in the applicable jurisdictions and, with respect to each Pledged Account, upon the execution and delivery of an Account Control Agreement with respect to such Pledged Account, the Liens granted pursuant to this Security Agreement shall constitute perfected Liens (with respect to Intellectual Property and Vehicles, if and to the extent perfection may be achieved by the filing of UCC-1 financing statements) in favor of the Lender, in the Collateral as collateral security for the Obligations, which Liens will be prior to all other Liens on the Collateral of such Grantor, subject to Permitted Liens, and which are enforceable as such against all creditors of such Grantor and any Person purporting to purchase such Collateral from such Grantor.

(c) Receivables. The amount represented by such Grantor to the Lender from time to time as owing by each Account Debtor or by all Account Debtors in respect of such Grantor's Receivables will at such time be the correct amount actually owing by such Account Debtor or Account Debtors thereunder. No amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument or Chattel Paper that has not been delivered to the Lender. The place where such Grantor keeps its records concerning such Grantor's Receivables is the address set forth opposite such Grantor's name on Schedule I.

(d) Material Contracts. No consent of any party (other than such Grantor) to any Material Contract such Grantor is party to is required, or purports to be required, in connection with the execution, delivery and performance of this Security Agreement. Each Material Contract such Grantor is party to is in full force and effect and constitutes a valid and legally enforceable obligation of the parties thereto, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting the enforcement of creditor's rights generally and general equitable principles (whether considered in a proceeding in equity or at law). No consent or authorization of, filing with or other act by or in respect of any Governmental Authority is required in connection with the execution, delivery, validity or enforceability of any of the Material Contracts such Grantor is party to by any party thereto other than those which have been duly obtained, made or performed, are in full force and effect and do not subject the scope of any such Material Contract to any material adverse limitation, either specific or general in nature. Neither such Grantor nor (to the best of such Grantor's knowledge) any other party to any Material Contract such Grantor is party to is in default or is likely to become in default in the performance or observance or any of the terms thereof in any manner that, in the aggregate, could reasonably be expected to have a Material Adverse Effect. Such Grantor has fully performed all its material obligations under each Material Contract such Grantor is party to. The right, title and interest of such Grantor in, to and under each Material Contract such Grantor is party to are not subject to any defense, offset, counterclaim or claim which could reasonably be expected to have a Material Adverse Effect, nor have any of the foregoing been asserted or alleged against such Grantor as to any such Material Contract. Such Grantor has delivered to the Lender a complete and correct copy of each Material Contract such Grantor is party to, including all amendments, supplements and other modifications thereto. No amount payable to such Grantor under or in connection with any Material Contract such Grantor is party to is evidenced by any Instrument or Chattel Paper that has not been delivered to the Lender.

(e) Inventory and Equipment. The Inventory and the Equipment of such Grantor are kept at the locations listed on Schedule III hereto.

(f) Location. Such Grantor's location (for purposes of Section 9-307 of the UCC) is, and for the four (4) months preceding the date hereof has been, at the place specified for such Grantor on

Schedule I. Such Grantor, if not a “registered organization” as defined in the UCC, is so designated on Schedule I and has only one place of business, the location of which is at the place specified for such Grantor on Schedule I.

(g) Name. (i) The exact legal name of such Grantor is as specified for such Grantor on Schedule I; and (ii) such Grantor has not done business under a previous name, assumed name or trade name or changed its name in the prior twelve (12) months.

(h) Farm Products. None of the Collateral of such Grantor constitutes, or is the Proceeds of, Farm Products.

(i) Insurance Policies. None of the Collateral of such Grantor constitutes an interest or claim in or under any policy of insurance or contract for annuity, except to the extent the same constitutes Proceeds.

(j) Intellectual Property. (i) Schedule II lists all Intellectual Property Licenses and all registered and filed Intellectual Property and pending applications for Intellectual Property owned by each Grantor, and for each listed item, the application or registration numbers and dates, and the name of the current registered owner and/or registrar of domain names; (ii) all material Intellectual Property is valid, subsisting, unexpired and enforceable and has not been abandoned; (iii) except as described on Schedule II, such Grantor is the exclusive owner of all right, title and interest in and to, or has the right to use, all such Intellectual Property Collateral; (iv) consummation and performance of this Agreement will not result in the invalidity, unenforceability or impairment of any such Intellectual Property Collateral, or in default or termination of any material Intellectual Property License; (v) except as described on Schedule II, there are no outstanding holdings, decisions, consents, settlements, decrees, orders, injunctions, rulings or judgments that would limit, cancel or question the validity or enforceability of any such Intellectual Property Collateral or such Grantor’s rights therein or use thereof; (vi) to such Grantor’s knowledge, except as described on Schedule II, the operation of such Grantor’s business and such Grantor’s use of Intellectual Property Collateral in connection therewith, does not infringe or misappropriate the intellectual property rights of any other Person; (vii) except as described in Schedule II, no action or proceeding is pending or, to such Grantor’s knowledge, threatened (A) seeking to limit, cancel or question the validity of any material Intellectual Property Collateral or such Grantor’s ownership interest or rights therein, (B) which, if adversely determined, could have a Material Adverse Effect on the value of any such Intellectual Property Collateral or (C) alleging that any such Intellectual Property Collateral, or such Grantor’s use thereof in the operation of its business, infringes or misappropriates the intellectual property rights of any Person; and (viii) to such Grantor’s knowledge, there has been no Material Adverse Effect on such Grantor’s rights in its material Trade Secrets as a result of any unauthorized use, disclosure or appropriation by or to any Person, including such Grantor’s current and former employees, contractors and agents.

(k) Governmental Obligors. None of the obligors on any Receivable that constitutes Collateral, and none of the parties to any Contract that constitutes Collateral, is a Governmental Authority except for, with respect to any other Receivables or Contracts, in each case, that constitute Collateral, those obligors and parties thereof so long as the requirements of Section 5(m) have been satisfied with respect to such Receivables or Contracts.

(l) Deposit Accounts, Commodity Accounts and Securities Accounts. All Pledged Accounts with respect to such Grantor are listed on Schedule V, including the institution at which such Deposit Account, Securities Account or Commodity Account is established, the purpose thereof, the name thereon, and the account number thereof. Each Pledged Account is a Controlled Account.

5. Covenants. The Grantors hereby jointly and severally agree that, so long as any amount is owing to the Lender hereunder or under any other Loan Document (except contingent indemnification and expense reimbursement obligations for which no claim has been made), each Grantor shall:

(a) Maintenance of Perfected Security Interests; Further Documentation; Pledge of Instruments and Chattel Paper. Such Grantor shall maintain the security interest created by this Security Agreement as a perfected security interest having at least the priority described in Section 4(b) hereof and shall defend such security interest against the claims and demands of all Persons whomsoever. At any time and from time to time, upon the written request of the Lender, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver such further instruments and documents and take such further action as the Lender may reasonably request for the purpose of obtaining or preserving the full benefits of this Security Agreement and of the rights and powers herein granted, including, without limitation, (i) the filing of any financing statements, financing change statements or amendments to financing statements or continuation statements under the UCC or any similar personal property security legislation in effect in any jurisdiction with respect to the Liens created hereby, (ii) the filing of any recordation of security interest documents with the U.S. Patent and Trademark Office, the U.S. Copyright Office and any other applicable office or agency of another country or political subdivision thereof and (iii) in the case of Investment Property, Deposit and any other relevant Collateral, taking any actions (including, without limitation, entering into, and using its best efforts to cause any relevant third party to enter into, one or more Account Control Agreements) necessary to enable the Lender to obtain "control" (within the meaning of the applicable UCC) with respect thereto. Unless otherwise agreed by the Lender, each Grantor shall enable the Lender to obtain control of each Letter-of-Credit Right of such Grantor pursuant to Section 9-107 of the UCC by assigning to the Lender any Letter-of-Credit Rights of such Grantor, causing the issuing bank of such letter of credit to consent to such assignment and having such letters of credit advised by the Lender. Each Grantor also hereby authorizes the Lender to file any such financing statements, financing change statements or amendments to financing statements or continuation statements without the signature of such Grantor to the extent permitted by applicable law. Any such financing statement may, at the option of the Lender, describe the property covered thereby as "all assets" or "all personal property" of such Grantor, or may use a similar description; provided, however, that the Lender shall be permitted to amend such description to the extent reasonably necessary to accommodate Excluded Assets. A carbon, photographic or other reproduction of this Security Agreement shall be sufficient as a financing statement for filing in any jurisdiction. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument or Chattel Paper or any Certificated Security, such Instrument, Chattel Paper or Certificated Security shall be promptly delivered to the Lender, duly endorsed in a manner satisfactory to the Lender, to be held as Collateral pursuant to this Security Agreement; provided, however, than any other such Instrument of Chattel Paper shall be held by such Grantor in trust for the Lender.

(b) Maintenance of Records. Such Grantor will keep and maintain at its own cost and expense satisfactory and complete records of the Collateral, including, without limitation, a record of all payments received and all credits granted with respect to the Accounts. Each Grantor will mark its books and records pertaining to the Collateral to evidence this Security Agreement and the security interests granted hereby.

(c) Right of Inspection. The Lender shall at all times have full and free access during normal business hours to all the books, correspondence and records of such Grantor, and the Lender may examine the same, take extracts therefrom and make photocopies thereof, and such Grantor agrees to render to the Lender at the Grantors' cost and expense after the date agreed or requested therefor, such clerical and other assistance as may be reasonably requested with regard thereto.

(d) Compliance with Laws, etc. Such Grantor will comply with all Requirements of Law applicable to the Collateral or any part thereof or to the operation of such Grantor's business except to the extent that failure to comply therewith could not, in the aggregate, be reasonably expected to have a Material Adverse Effect; provided, however, that each Grantor may obtain waivers or contest any Requirement of Law in any reasonable manner which shall not, in the sole opinion of the Lender, adversely affect the Lender's rights or the priority of its Liens on the Collateral.

(e) Compliance with Terms of Material Contracts, etc. Such Grantor will perform and comply in all material respects with all its obligations under the Material Contracts and all its other Contractual Obligations relating to the Collateral.

(f) Payment of Obligations. Such Grantor will pay promptly when due all Taxes, assessments and governmental charges or levies imposed upon the Collateral or in respect of its income or profits therefrom, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Collateral, except that no such charge need be paid if (i) the validity thereof is being contested in good faith by appropriate proceedings and (ii) such charge is adequately reserved against on such Grantor's books in accordance with GAAP.

(g) Limitation on Liens on Collateral. Such Grantor will not create, incur or suffer to exist, will defend the Collateral against, and will take such other action as is necessary to remove, any Lien or claim on or to the Collateral, other than the Liens created hereby and other than Permitted Liens, and will defend the right, title and interest of the Lender in and to any of the Collateral against the claims and demands of all Persons whomsoever (other than in respect of such Permitted Liens).

(h) Limitations on Dispositions of Collateral. Such Grantor will not sell, transfer, lease or otherwise dispose of any of the Collateral, or attempt, offer or contract to do so except for sales, transfers and other dispositions of Collateral permitted under Section 6.5 of the Loan Agreement.

(i) Control of Pledged Accounts. Such Grantor agrees that, subject to Section 8(a) or otherwise with the consent of the Lender in its sole discretion (exercised in good faith), at no time shall it hold any funds or any other assets in any Pledged Account that is not a Controlled Account.

(j) Assets in Pledged Accounts. Such Grantor agrees that at any time after the occurrence and during the continuance of an Event of Default, such Grantor will not, and will not cause or permit any of its agents, representatives or other Persons to withdraw any cash (or, with respect to any Securities Account or Commodity Account, withdraw, transfer, sell, redeem, pledge, rehypothecate or otherwise deliver or dispose of any assets in such account) from any Controlled Account (each an "Account Transaction") without the prior written consent of the Lender. Upon the occurrence and during the continuance an Event of Default, (i) the Lender shall be entitled to instruct the applicable bank, securities intermediary or other Person maintaining any Controlled Account to not execute any Account Transaction without the prior written consent of the Lender and (ii) any amounts in any Controlled Account may be withdrawn by the Lender and applied as provided in Section 8(b). Such Grantor agrees that it will not transfer assets out of any Securities Accounts or Commodity Accounts, or transfer any Securities Accounts or Commodity Accounts to another securities intermediary, unless such Grantor, the Lender, and the substitute securities intermediary have entered into an Account Control Agreement. No arrangement contemplated hereby or by any Account Control Agreement in respect of any Securities Accounts, Commodity Accounts or other Investment Property shall be modified by such Grantor without the prior written consent of the Lender (such consent to be exercised in good faith). Upon the occurrence and during the continuance of an Event of Default, the Lender may notify any securities intermediary to liquidate the applicable Securities Accounts and/or Commodity Accounts or any related Investment Property maintained or held thereby and remit the proceeds thereof to an account specified by the Lender

(including any Collateral Account). For the avoidance of doubt, and notwithstanding anything to the contrary in any Account Control Agreement or any other Loan Document, including this Security Agreement, the Lender shall not exercise any remedies in respect of any Collateral in any Controlled Account, including without limitation, giving any instruction to a bank, securities intermediary or other Person maintaining a Controlled Account, or withdrawing or transferring any funds or assets from a Controlled Account, unless in each case an Event of Default has occurred and is continuing.

(k) Inventory Evidenced by Documents. Such Grantor shall cause any negotiable Documents evidencing any such Inventory of such Grantor (A) if being held by the ultimate purchaser thereof to be issued to (1) the order of the Lender and (2) delivered to the Lender and (B) if otherwise, duly endorsed in a manner satisfactory to the Lender, to be held as Collateral pursuant to this Security Agreement.

(l) Additional Commercial Tort Claims. If at any time such Grantor has any Commercial Tort Claims that constitute Collateral which are not described on Schedule VI hereto, such Grantor shall as soon as reasonably practicable provide to the Lender a supplement to Schedule VI, describing such additional Commercial Tort Claims. Upon delivery of such supplement, Schedule VI shall be deemed modified to the extent provided in such supplement.

(m) Certain Government Receivables. With respect to Receivables or Contracts, in each case, that constitute Collateral, to which the counterparty or obligor is (i) a Governmental Authority, such Grantor shall, as soon as reasonably practicable after the request by the Lender, take any commercially reasonable actions under any Assignment of Claims Act required to permit or approve the assignment of the rights to payment thereunder or thereon to and for the benefit of the Lender or (ii) a Governmental Authority of a State within the United States, such Grantor shall, as soon as reasonably practicable, give notice to the Lender if such Governmental Authority has not, or has ceased to, waive all claims of sovereign immunity with respect to such Receivable or Contract by statute, applicable case law, contract or otherwise.

(n) Limitations on Modifications of Material Contracts and Agreements Giving Rise to Receivables; Exercise of Rights; Notices. Such Grantor will not (i) amend, modify, terminate or waive any provision of any Material Contract or in any manner which could reasonably be expected to materially adversely affect the value of such Material Contract as Collateral, (ii) other than in accordance with its standard operating practices and customary market practice in markets similar to those in which such Grantor operates, fail to exercise promptly and diligently each and every material right which it may have under each Material or (iii) fail to deliver to the Lender a copy of each material demand, notice or document received by it relating in any way to any Material Contract that questions the validity or enforceability of such Material Contract within three (3) Business Days after receipt by such Grantor thereof.

(o) Maintenance of Equipment. Such Grantor will maintain each item of Equipment in good operating condition, ordinary wear and tear and immaterial impairments of value and damage by the elements excepted, and will provide all maintenance, service and repairs in accordance with its standard operating practices and customary market practice in markets similar to those in which such Grantor operates.

(p) Maintenance of Insurance. Such Grantor will maintain, with financially sound and reputable companies, insurance policies (i) insuring the Inventory, Equipment and Vehicles against loss by fire, explosion, theft and such other casualties as may be reasonably satisfactory to the Lender in amounts comparable to amounts of insurance coverage obtained by similar businesses of similar size acting prudently and (ii) insuring each Grantor and the Lender against liability for personal injury and

property damage relating to such Inventory, Equipment and Vehicles, such policies to be in such form and amounts and having such coverage as shall be comparable to forms, amounts and coverage, respectively, obtained by similar businesses of similar size acting prudently, with losses payable to any Grantor and the Lender as their respective interests may appear or, in the case of liability insurance, showing the Lender as additional insured parties. All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by the Lender of written notice thereof, (ii) name the Lender as insured party and loss payee, (iii) include a breach of warranty clause and (iv) be reasonably satisfactory in all other respects to the Lender. Each Grantor shall deliver to the Lender a report of a reputable insurance broker with respect to such insurance when available during each calendar year and such supplemental reports with respect thereto as the Lender may from time to time reasonably request.

(q) Further Identification of Collateral; Schedule Supplementation. Such Grantor will furnish to the Lender from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Lender may reasonably request, all in reasonable detail. Such Grantor will furnish to the Lender such supplements to the Schedules hereto from time to time as shall be necessary for the representations and warranties contained in Section 4 of this Security Agreement to be true and correct in all material respects as of the date made or deemed made (including pursuant to Section 4.2 of the Loan Agreement), and such Schedules shall be deemed modified by such supplemental information upon the delivery thereof by such Grantor to the Lender.

(r) Notices. Such Grantor will advise the Lender promptly, in reasonable detail, at its address set forth in the Loan Agreement, (i) of any Lien (other than Liens created hereby or Permitted Liens) on, or claim asserted against, any of the Collateral and (ii) of the occurrence of any event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the Liens created hereunder.

(s) Changes in Locations, Name, etc. Such Grantor will not (i) without ten (10) Business Days' prior written notice to the Lender, change its location (for purposes of Section 9-307 of the UCC) from that specified in Section 4(f) or remove its books and records concerning the Receivables from the location specified in Section 4(c), (ii) without ten (10) Business Days' prior written notice to the Lender, permit any of the Inventory or Equipment to be kept at a location other than those listed on Schedule III hereto or otherwise in such other locations in the United States as notified to the Lender other than while in transit to such locations or for repairs, (iii) without ten (10) Business Days' prior written notice to the Lender, change its name, identity or structure or (iv) unless thirty (30) days written notice to such effect shall have been given and any filing under the UCC as the Lender may reasonably request to maintain the perfected security interest granted hereto has been made, reorganize under the laws of another jurisdiction or as a different type of entity.

(t) Intellectual Property.

(i) Each Grantor, as applicable, (either itself or through licensees) shall (A) continue to use each material Trademark on each and every product or in connection with each and every service identified in its respective applications or registrations in order to maintain such Trademark in full force free from any claim of abandonment for non-use, except such Trademarks that such Grantor decides, in its reasonable good faith business judgment and consistent with its past practices, to abandon, (B) maintain the quality of products and services offered under such Trademark consistent with its best past standards, (C) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, and (D) not (and not permit any licensee or sublicensee thereof to) do any

act or knowingly omit to do any act whereby such Trademark may become abandoned, invalidated or impaired in any way.

(ii) Except as otherwise permitted herein, each Grantor (either itself or through licensees) shall not do any act, or omit to do any act, whereby any of such Grantor's material Owned Intellectual Property may become forfeited, invalidated or abandoned or dedicated to the public, or placed or fall in public domain.

(iii) Whenever any Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any applicable office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Lender within five Business Days after the last day of the fiscal quarter in which such filing occurs. Upon request of the Lender, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Lender may request to evidence and/or perfect the Lender's security interest in any applicable Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(iv) Each Grantor, as applicable, shall take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any applicable office or agency in any other country or political subdivision thereof, to maintain, pursue and enforce each application relating to any of such Grantor's material Owned Intellectual Property (and to obtain the relevant registration) and to maintain each registration of such Grantor's material Owned Intellectual Property, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability, except for applications and registrations that such Grantor decides in its reasonable good faith business judgment and consistent with its past practices to abandon or allow to expire.

(v) Each Grantor (either itself or through licensees) shall not perform any act or use any of such Grantor's Owned Intellectual Property to knowingly infringe the intellectual property rights of any third party.

(vi) In the event that any Grantor's material Owned Intellectual Property is infringed, misappropriated or diluted by a third party, such Grantor shall (A) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (B) if such Grantor's Owned Intellectual Property is of material economic value, promptly notify the Lender after such Grantor learns thereof and protect and/or enforce such Intellectual Property, including, as applicable, by suing for infringement, misappropriation, or dilution, seeking injunctive relief where appropriate and recovering any and all damages for such infringement, misappropriation or dilution; provided that, the Grantors shall not have any obligation to protect or enforce such Intellectual Property if the Lender provides any Grantor with a written waiver of this requirement.

(u) Vehicles. Such Grantor will maintain each Vehicle in good operating condition, ordinary wear and tear and immaterial impairments of value and damage by the elements excepted, and will provide all maintenance, service and repairs necessary for such purpose. If an Event of Default shall occur and be continuing, at the request of the Lender, such Grantor shall, within thirty (30) days after such request, file applications for certificates of title indicating the Lender's first priority Lien on the

Vehicles covered by such certificates, together with any other necessary documentation, in each office in each jurisdiction which the Lender shall deem advisable to perfect its Liens on the Vehicles.

6. Lender's Appointment as Attorney-in-Fact.

(a) Powers. Each Grantor hereby irrevocably constitutes and appoints the Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of each Grantor and in the name of each Grantor or in its own name, from time to time in the Lender's discretion, for the purpose of carrying out the terms of this Security Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Security Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Lender the power and right, on behalf of each Grantor, without notice to or assent by any Grantor, to do the following:

(i) in the name of each Grantor or its own name, or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Account, Instrument, Chattel Paper, General Intangible or Material Contract or with respect to any other Collateral and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Lender for the purpose of collecting any and all such moneys due under any Account, Instrument, Chattel Paper, General Intangible or Material Contract or with respect to any other Collateral whenever payable;

(ii) to pay or discharge Taxes and Liens levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Security Agreement and to pay all or any part of the premiums therefor and the costs thereof;

(iii) in the case of any Grantor's Intellectual Property, to execute and deliver any and all agreements, instruments, documents and papers as the Lender may request to evidence the Lender's security interest in such Intellectual Property and the goodwill and general intangibles of the Grantors relating thereto or represented thereby;

(iv) to execute, in connection with any sale provided for in Section 9 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (A) to direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Lender or as the Lender shall direct; (B) to ask or demand for, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (D) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (E) to defend any suit, action or proceeding brought against any Grantor with respect to any Collateral; (F) to settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, to give such discharges or releases as the Lender may deem appropriate; (G) to assign any Patent or Trademark (along with the goodwill of the business to which any such Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as

the Lender shall in its sole discretion determine; and (H) generally, subject to any applicable tariffs, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Lender were the absolute owner thereof for all purposes, and to do, at the Lender's option and the Grantors' expense, at any time, or from time to time, all acts and things which the Lender deems necessary to protect, preserve or realize upon the Collateral and the Lender's Liens thereon and to effect the intent of this Security Agreement, all as fully and effectively as the Grantors might do.

Anything in this Section 6(a) to the contrary notwithstanding, the Lender agrees that it will not exercise any rights provided for in this Section 6(a) unless an Event of Default has occurred and is continuing.

Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable.

The power of attorney conferred hereby on the Lender is solely to protect, preserve and realize upon its security interest in the Collateral. This power of attorney shall neither create any agency on the part of the Lender in favor of any Grantor, nor any fiduciary obligations or relationship on the part of the Lender for the benefit of any Grantor.

(b) No Duty on Lender's Part. The powers conferred on the Lender hereunder are solely to protect the Lender's interests in the Collateral and shall not impose any duty upon the Lender to exercise any such powers. The Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither they nor any of their officers, directors, shareholders, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

7. Performance by Lender of Grantors' Obligations. If any Grantor fails to perform or comply with any of its agreements contained herein, the Lender at its option, but without any obligation to do so, may itself perform or comply, or otherwise cause performance or compliance, with such agreement. The expenses of the Lender incurred in connection with such performance or compliance shall be payable, jointly and severally, by the Grantors to the Lender on demand and shall constitute Obligations secured hereby and, following such demand, shall bear interest at a rate per annum equal to the default rate of interest pursuant to Section 2.5(b) of the Loan Agreement.

8. Proceeds.

(a) Subject to distributions permitted pursuant to, and made in accordance with, Section 6.6 of the Loan Agreement, all Proceeds received by any Grantor consisting of cash, checks and other near-cash items shall be held by the Grantors in trust for the Lender, segregated from other funds of the Grantors, and shall, promptly upon receipt by any Grantor, be turned over to the Lender in the exact form received by such Grantor (duly endorsed by such Grantor to the Lender, if required), and held by the Lender in a Collateral Account maintained under the sole dominion and control of the Lender. Any and all such Proceeds held by the Lender in a Collateral Account (or by any Grantor in trust for the Lender) shall continue to be held as collateral security for the Obligations and shall not constitute payment thereof until applied as provided in Section 8(b). Cash or any other property held in a Controlled Account shall not be transferred to any Deposit Account, Securities Account or Commodity Account of any Grantor that is not a Controlled Account.

(b) If an Event of Default shall have occurred and be continuing, at any time at the Lender's election (or at the direction of the Required Lenders), the Lender may (or, if so directed by the

Required Lenders, shall) apply all or any part of the Proceeds constituting Collateral, whether or not held in any Collateral Account, and any Proceeds of any Pledge Agreement, the Guarantee or any other Loan Document, or otherwise received by the Lender, against the Obligations (whether matured or unmatured), such application to be in the following order:

(i) *First*, to pay incurred and unpaid fees and expenses of the Lender under the Loan Documents;

(ii) *Second*, to the Lender, for application by it towards payment of all amounts then due and owing and remaining unpaid in respect of interest and fees then due and owing and remaining unpaid to the Lender;

(iii) *Third*, to the Lender, for application by it towards payment of all principal on all Loans then outstanding;

(iv) *Fourth*, to the Lender, for application by it towards payment of all other amounts then due and owing and remaining unpaid in respect of the then due and owing and remaining unpaid to the Lender;

(v) *Fifth*, to the Lender, for application by it towards prepayment of the Obligations being so prepaid then held by the Lender; and

(vi) *Sixth*, any balance of such Proceeds remaining after the Obligations shall have been paid in full shall be paid over to the applicable Grantor or to whomsoever else may be lawfully entitled to receive the same.

9. Remedies. If an Event of Default shall occur and be continuing, the Lender may exercise, in addition to all other rights and remedies granted to it in this Security Agreement, the Loan Documents (including all of the Security Documents) and in any other instrument or agreement securing, evidencing or relating to any of the Obligations, all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, the Lender, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances transfer all or any part of the Collateral into the Lender's name or the name of its nominee or nominees, and/or may forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Lender or elsewhere upon such terms and conditions (including by lease or by deferred payment arrangement) as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk and/or may take such other actions as may be available under applicable law. The Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, auction or closed tender, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived or released. Each Grantor further agrees, at the Lender's request, to assemble the Collateral and make it available to the Lender at places which the Lender shall reasonably select, whether at any Grantor's premises or elsewhere. The Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Lender arising out of the exercise by the Lender hereunder, including,

without limitation, documented fees and disbursements of counsel, to the payment in whole or in part of the Obligations, in such order as provided in Section 8(b), and only after such application and after the payment by the Lender of any other amount required by any provision of law, including, without limitation, Section 9-615 of the UCC, or required pursuant to clause (vi) of Section 8(b), need the Lender account for the surplus, if any, to the Grantors. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Lender arising out of the exercise by the Lender of any of its rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay the Obligations (including the documented fees and disbursements of counsel employed by the Lender to collect such deficiency to the extent provided therefor in Section 8.6 of the Loan Agreement).

10. Grant of License to Use Patent, Trademark and Copyright Collateral. For the purpose of enabling the Lender to exercise rights and remedies under Section 9 hereof at such time as the Lender shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Lender an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, license or sublicense any of the Copyrights, Patents and Trademarks, now owned or hereafter acquired by any Grantor, and wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored. The use of such license by the Lender shall be exercised, at the option of the Lender for any purpose appropriate in connection with the exercise of remedies hereunder, only upon the occurrence and during the continuance of an Event of Default; provided that any license, sublicense or other transaction entered into by the Lender in accordance herewith shall be binding upon each Grantor notwithstanding any subsequent cure of an Event of Default. The Lender agrees to apply the net proceeds received from any license as provided in Section 8 hereof.

11. Limitation on Duties Regarding Preservation of Collateral.

(a) The Lender's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Lender deals with similar property for its own account. Neither the Lender nor its directors, officers, employees, agents or advisors shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Lender hereunder are solely to protect the Lender's interests in the Collateral and shall not impose any duty upon the Lender to exercise any such powers. The Lender shall be accountable only for amounts that the Lender actually receives as a result of the exercise of such powers, and neither the Lender nor any of the Lender's officers, directors, employees, agents or advisors shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

(b) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Receivables and Contracts (that constitute Collateral) to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with and pursuant to the terms and provisions of each such Receivable or Contract, and the Lender shall not have any obligation or liability under any Receivable or under any Contract, in each case, that constitutes Collateral, by reason of or arising out of this Security Agreement or the receipt by the Lender of any payment relating to such Receivable or Contract pursuant hereto, nor shall the Lender be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable or under or

pursuant to any Contract, in each case, that constitutes Collateral, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Receivable or under any Contract, in each case, that constitutes Collateral, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

12. Powers Coupled with an Interest. All authorizations and agencies herein contained with respect to the Collateral are irrevocable and powers coupled with an interest.

13. Notices. (a) Notices, requests and demands to or upon the Lender or any Borrower shall be effected in the manner set forth in Section 8.2 of the Loan Agreement and (b) notices, requests and demands to or upon any other Grantor shall be effected in the manner set forth in Section 14 of the Guarantee.

14. Waivers by Grantor. Each Grantor waives, to the maximum extent permitted by law, demand, presentment for payment, notice of non-payment, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or formalities of any kind (except notice of the time and place of public or private sale of the Collateral and any notice specifically provided herein, or in the other Loan Documents) to or upon such Grantor or any other Person (all and each of which are hereby expressly waived) with respect to the Obligations, and waives notice of the amount of the Obligations outstanding at any time.

15. Indemnification. Each Grantor agrees, jointly and severally, to (i) save the Lender harmless from, any and all liabilities, costs and expenses (including, without limitation, documented fees and expenses of counsel) with respect to, or resulting from, any delay in paying, any and all Other Taxes which may be payable or determined to be payable with respect to any of the Collateral and (ii) indemnify the Lender as set forth in Section 8.6 of the Loan Agreement. The agreements in this Section 15 shall survive the termination of this Security Agreement and the payment of the Loans and all other amounts payable under the Loan Documents.

16. Termination and Release.

(a) This Security Agreement (including as to any power of attorney, authorization or agency granted herein) and all other security interests granted hereby shall terminate when all the Obligations have been paid in full (other than inchoate claims in respect of indemnities for which no claim has been made or is known to any Grantor at the time all other Obligations have been paid in full).

(b) In connection with any termination or release pursuant to paragraph (a), the Lender shall promptly execute and deliver to each Grantor, at such Grantor's expense, all UCC termination statements and similar documents that such Grantor shall reasonably request to evidence such termination or release, and will duly assign and transfer to such Grantor, such of the Collateral that may be in the possession of the Lender and has not theretofore been sold or otherwise applied or released pursuant to this Security Agreement. Any execution and delivery of documents pursuant to this Section 19 shall be without recourse to or representation or warranty by the Lender.

17. Severability. Any provision of this Security Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

18. Paragraph Headings. The paragraph headings used in this Security Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

19. No Waiver; Cumulative Remedies. The Lender shall not by any act (except by a written instrument pursuant to Section 20 hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Lender, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Lender would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

20. Waivers and Amendments; Successors and Assigns; Governing Law. None of the terms or provisions of this Security Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by each Grantor and the Lender; provided that any provision of this Security Agreement may be waived by the Lender in a written instrument executed by the Lender; provided further that, reasonable updates and modifications to the schedules hereto shall not require the consent of the Lender. This Security Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Lender and its respective successors and assigns. THIS SECURITY AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF DELAWARE.

21. Additional Grantors. Each Applicable Subsidiary of a Borrower which is required pursuant to Section 5.9(b) of the Loan Agreement to become party to this Security Agreement shall become a Grantor for all purposes of this Security Agreement upon execution and delivery by such Subsidiary of a Supplement in the form of Annex A hereto, including the supplements to the Schedules referred to therein, and such Schedules shall be deemed modified by such supplemental information upon the delivery thereof by such new Grantor to the Lender.

22. Submission to Jurisdiction; Waivers. Each Grantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Security Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of Delaware, the courts of the United States of America for the District of Delaware, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Grantor at its address set forth in (a) Section 8.2 of the Loan Agreement, with

respect to the Borrower or (b) Section 14 of the Guarantee, with respect to each other Grantor, or at such other address of which the Lender shall have been notified pursuant thereto; and

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction.

23. Waiver of Certain Damages. Each Grantor hereby waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in Section 22 any special, exemplary, punitive or consequential damages.


24. WAIVER OF JURY. EACH OF THE GRANTORS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

25. Counterparts. This Security Agreement may be executed by one or more of the parties to this Security Agreement on any number of separate counterparts (including by facsimile transmission or electronic mail transmission in portable document format of signature pages hereto), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Security Agreement by facsimile transmission or by electronic mail in portable document format shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Security Agreement signed by all the parties shall be lodged with the Borrowers and the Lender.


[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each Grantor has caused this Security Agreement to be duly executed and delivered as of the date first above written.


EARTHWATER TECHNOLOGIES, INC.

By: 
Name: RICHARD C JACKSON
Title: CEO

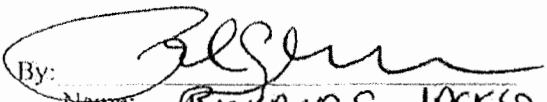
EARTHWATER RESOURCES, LLC

By: 
Name: RICHARD C JACKSON
Title: MANAGER

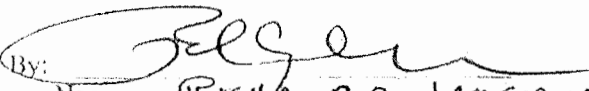
EARTHWATER - TEXAS, LLC

By: 
Name: RICHARD C JACKSON
Title: MANAGER

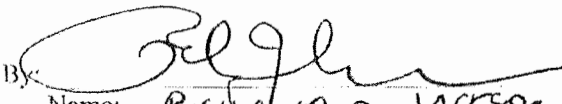
EARTHWATER PERMIAN LLC

By: 
Name: RICHARD C JACKSON
Title: MANAGER

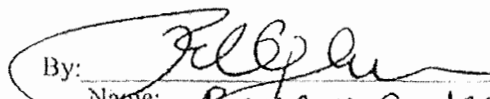
EARTHWATER SOLUTIONS, LLC

By: 
Name: RICHARD C JACKSON
Title: MANAGER

EARTHWATER NEW MEXICO, LLC

By: 
Name: RICHARD C JACKSON
Title: MANAGER

EARTHWATER BAKKEN, LLC

By: 
Name: RICHARD C JACKSON
Title: MANAGER

Schedule I

NAMES, FORM OF ORGANIZATION, AND LOCATION OF GRANTORS

Earthwater Technologies, Inc.	Corporation	101 N. Union Street, Suite 250 Alexandria, VA 22314
EarthWater Resources, LLC	Limited Liability Company	101 N. Union Street, Suite 250 Alexandria, VA 22314
Earthwater-Texas, LLC	Limited Liability Company	12903 Agency San Antonio, TX 78247
Earthwater Permian, LLC	Limited Liability Company	12903 Agency San Antonio, TX 78247
Earthwater Solutions, LLC	Limited Liability Company	12903 Agency San Antonio, TX 78247
Earthwater New Mexico, LLC	Limited Liability Company	12903 Agency San Antonio, TX 78247
EarthWater Bakken, LLC	Limited Liability Company	1720 Burnt Boot Drive Suite 100 Bismarck, ND 58503

Schedule II

INTELLECTUAL PROPERTY

Registration No.	Country	Owner	Issue or File Date	Description/Title	Type of Intellectual Property
None					

INTELLECTUAL PROPERTY LICENSES

Registration No.	Owner	Issue or File Date	Description/Title	Type of Intellectual Property
None	Robert Bisson	None	Megawatershed Protocols	Trade Secrets

INTELLECTUAL PROPERTY APPLICATIONS

Description/Title	Owner	File Date	Application No.
None			

INVENTORY AND EQUIPMENT

1. Park trailer, Pittsburgh, PA
2. Two Briggs & Stratton Generators, McKenzie County, North Dakota
3. Flow meter on Well #1, McKenzie County, North Dakota
4. Flow meter on Well #2, McKenzie County, North Dakota
5. Transformer, Karnes County, Texas
6. Cruz Well #1, Karnes County, Texas
7. Piping system, 10" HDPE, Karnes County, Texas
8. 300 HP Electrical Control Panel, Karnes County, Texas
9. 600 amp, 3 pole, 600 volt circuit breaker, Karnes County, Texas
10. Electric Booster Pumping System #1, Karnes County, Texas
11. Electric Booster Pumping System #2, Karnes County, Texas
12. SonicSolutions ultrasonic algae control equipment, Karnes County, Texas
13. Tophat gooseneck trailer, McKenzie County, North Dakota
14. Red Rooster Water Booster Pump/Trailer - #32, Karnes County, Texas
15. Red Rooster Water Booster Pump/Trailer - #33, Karnes County, Texas
16. Red Rooster Water Booster Pump/Trailer - #34, Karnes County, Texas
17. 1996 Bouncer RV, Bexar County, Texas
18. Wire line, Lea County, New Mexico
19. GEO transits, Burleigh and Williams Counties, North Dakota
20. Garmin handheld GPS, Burleigh and Williams Counties, North Dakota
21. Camera, lens, supplies, Burleigh and Williams Counties, North Dakota
22. Geiger Counter, Burleigh and Williams Counties, North Dakota
23. Conductivity Meter, Water Level Meter, Burleigh and Williams Counties, North Dakota
24. Gas monitor, Burleigh and Williams Counties, North Dakota
25. 2000 feet of casing, various sizes, McKenzie County, North Dakota
26. Office furniture and equipment, Burleigh and Williams Counties, North Dakota, Alexandria, Virginia, Bexar County, Texas

MATERIAL CONTRACTS

Water Development and Supply Agreement Between EarthWater Permian, LLC and Pioneer Natural Resources, LLC dated October 16, 2013.

Purchase Order Between EarthWater Resources, LLC and Continental Resources, dated October 8, 2013.

Schedule V

DEPOSIT ACCOUNTS, SECURITIES ACCOUNTS AND COMMODITY ACCOUNTS

Bank		Entity	Account #	Account Type
1	Wells Fargo	EW Texas	2960941058	Deposit
2	Wells Fargo	EW Bakken	1353459611	Deposit
3	Wells Fargo	EW New Mexico	9991883407	Deposit
4	Wells Fargo	EW Resources	7347957008	Deposit
5	Wells Fargo	EW Solutions	6759514844	Deposit
6	Wells Fargo	EW Technologies	3368813055	Deposit
7	Wells Fargo	EW Permian	3424676678	Deposit

Schedule VI

COMMERCIAL TORT CLAIMS

None.

ANNEX A

ADDENDUM TO SECURITY AGREEMENT

Each of the undersigned, [NAME OF NEW SUBSIDIARY] (each a "New Grantor", together the "New Grantors"):

(i) agrees to all of the provisions of the Security Agreement, dated as of November 4, 2013 (as amended, supplemented or otherwise modified prior to the date hereof, the "Security Agreement"), made by each party listed on Schedule I thereto (together with each Person which may, from time to time, become party thereto as a Grantor, each a "Grantor", collectively, the "Grantors"), in favor of BOF EARTHWATER LLC, (the "Lender"), made pursuant to the Loan Agreement, dated as of November 4, 2013, by and among EARTHWATER RESOURCES LLC, a Delaware limited liability company ("EW Resources"), and EARTHWATER TECHNOLOGIES, INC. ("EW Technologies"), and collectively with EW Resources, the "Borrowers"), and the Lender.

(ii) effective on the date hereof, becomes a party to the Security Agreement, as a Grantor, with the same effect as if the undersigned were an original signatory to the Security Agreement and with the representations and warranties contained therein being deemed to be made by it on and as of the date hereof;

(iii) as additional collateral security for the prompt and complete payment when due (whether at stated maturity, by acceleration or otherwise) of the Obligations and in order to induce the Lenders to make and maintain outstanding their Loans under the Loan Agreement and the other Loan Documents, hereby grants to the Lender a security interest in all of the property listed in Section 2 of the Security Agreement now owned or at any time hereafter acquired by such New Grantor or in which such New Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "New Grantor Collateral");

(iv) represents and warrants that the information provided on the attached schedules disclose, with respect to it, all information that is required under the Security Agreement to be disclosed by a Grantor; and

(v) the Schedules to the Security Agreement are hereby supplemented by (a) if a supplement to any such Schedule is attached to this Supplement, by including the items listed on such supplement to such Schedule in such Schedule, and (b) if any such Schedule refers to the Collateral Certificate delivered by the Grantors on the Closing Date, by deeming incorporated in such Collateral Certificate the Supplement to Collateral Certificate delivered by the New Grantor to the Lender on the date of this Supplement.

Terms defined in the Security Agreement and the Loan Agreement shall have such defined meanings when used herein.

By its acceptance hereof, each undersigned New Grantor hereby ratifies and confirms its respective obligations under the Security Agreement, as supplemented hereby.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Addendum to Security Agreement, all as of the day and year written below.

[NAME OF NEW GRANTOR]

By: _____
Name:
Title:

Dated: _____, 20__

ACCEPTED AND AGREED:

BOF EARTH WATER LLC,
as Lender

By: _____
Name:
Title:

Schedule I

NAME, FORM OF ORGANIZATION AND LOCATION OF NEW GRANTOR

Schedule II

INTELLECTUAL PROPERTY

<u>Registration No.</u>	<u>Country</u>	<u>Issue or File Date</u>	<u>Description/Title</u>	<u>Type of Intellectual Property</u>
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INTELLECTUAL PROPERTY LICENSES

<u>Registration No.</u>	<u>Owner</u>	<u>Issue or File Date</u>	<u>Description/Title</u>	<u>Type of Intellectual Property</u>
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INTELLECTUAL PROPERTY APPLICATIONS

<u>Description/Title</u>	<u>File Date</u>	<u>Application No.</u>
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Schedule III

INVENTORY AND EQUIPMENT

MATERIAL CONTRACTS

Schedule V

DEPOSIT ACCOUNTS, SECURITIES ACCOUNTS AND COMMODITY ACCOUNTS

Schedule VI

COMMERCIAL TORT CLAIMS



EARTHWATER TECHNOLOGIES INC.

This Non-Disclosure and Confidentiality Agreement (the "**Agreement**") is made effective as of 18 JUNE 2015 (the "**Effective Date**") by and between KEVIN MULLIGAN together with his/her affiliates and respective officers, directors, partners, agents, employees and associates, the "**Receiving Party**"), whose address is 1 STORYTELLING ROCK ROAD, WOLFEBORO, NH 03874, USA and Earthwater Technologies Inc. (the "**Disclosing Party**"), whose address is 100 N Pitt St. Suite 307 Alexandria, VA 22314, USA.

RECITALS

WHEREAS, the Parties wish to engage in discussions or negotiations regarding a potential business relationship and may subsequently engage in a business relationship (the "**Business Purpose**");

WHEREAS, in furtherance of the Business Purpose, a Party may disclose, receive or have access to Confidential Information (as defined below);

WHEREAS, as a condition of such disclosure, receipt or access, each Party agrees to treat such Confidential Information in accordance with the terms and provisions of this Agreement.

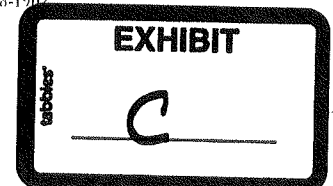
NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Definition of Confidential Information.

1.1 "**Confidential Information**" as used in this Agreement shall mean any and all technical and non-technical information, including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source code, and formulae related to the existing, future and proposed products and services of a Party and includes, without limitation, information concerning research, experiments, development, design, and specifications, engineering, finances, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing information, account data, and customer and potential customer information.

1.2 "**Confidential Information**" also includes a third party's proprietary or confidential information disclosed hereunder.

All information described in Sections 1.1 and 1.2, above, disclosed by a Party ("**Discloser**") shall be considered Confidential Information by the receiving Party ("**Recipient**") if: (i) based on the content of the information and the circumstances surrounding disclosure, regardless of how communicated or transmitted, such information should reasonably be understood to be confidential; (ii) such information derives economic value, actual or potential, from not being generally known to other persons; or (iii) such information is orally identified or conspicuously designated as "Confidential" or "Proprietary" at the time of disclosure or in writing within thirty (30) days of disclosure (provided that any delay beyond 30 days will not invalidate such confidentiality to the extent not already disclosed by Recipient).





EARTHWATER
TECHNOLOGIES INC.

2. Nondisclosure and Nonuse Obligations. Each Party agrees that:

Recipient shall not make use of, disseminate or in any way disclose Discloser's Confidential Information except with Discloser's prior, written authorization.

Recipient shall disclose Discloser's Confidential Information only to those of its employees and representatives who need to know such information to fulfill the Business Purpose and who are bound by terms and conditions substantially similar to those of this Agreement. Recipient shall not otherwise disclose Discloser's Confidential Information to any of Recipient's affiliates or to any other third party.

Recipient shall safeguard Discloser's Confidential Information with the same degree of care as it accords to its own Confidential Information and, at a minimum, with a reasonable of care.

Recipient shall not reverse engineer, disassemble, decompile or otherwise analyze the physical construction of, any such items, except as expressly permitted by Discloser in a written agreement between the Parties.

A Party shall not disclose to any form of public media the existence of any business negotiations, discussions, consultations or agreements in progress between the Parties shall not be without written approval of both Parties.

Discloser shall not communicate any information to Recipient in violation of the proprietary rights of any third party.

Recipient shall promptly give notice to Discloser of any unauthorized use or disclosure of the Confidential Information under Recipient's control. Recipient shall assist Discloser in remedying any such unauthorized use or disclosure of Confidential Information.

3. Exclusions from Nondisclosure and Nonuse Obligations. Recipient's obligations under Section 2 ("Nondisclosure and Nonuse Obligations") with respect to any portion of Discloser's Confidential Information shall terminate when Recipient, seeking to avoid such obligations can document that the purportedly Confidential Information was: (i) in the public domain at or subsequent to the time it was communicated to Recipient by Discloser through no fault of Recipient; (ii) rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time it was communicated to Recipient by Discloser; (iii) developed by employees or agents of Recipient independently of and without reference to any information communicated to Recipient by Discloser; or (iv) communicated by Discloser to an unaffiliated third party free of any obligation of confidence.

4. Disclosure Under Court Order or for Governmental Proceeding. Nothing in this Agreement shall be construed to restrict a Party from disclosing Confidential Information as required by law or court order or other governmental order or request; provided, in each case, the Recipient subject to such requirement shall timely inform the Discloser and use all reasonable efforts to limit disclosure and maintain the confidentiality of such Confidential Information. In addition, Recipient shall permit Discloser to attempt to limit such disclosure by appropriate legal means.



5. Ownership and Possession.

All Confidential Information and any Derivatives thereof, whether created by Discloser or Recipient, remain the property of Discloser and no license or other rights to Confidential Information is granted or implied hereby. For purposes of this Agreement, "**Derivatives**" shall mean: (i) for copyrightable or copyright material, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret.

All materials (including without limitation, documents, drawings, models, apparatus, sketches, designs and lists) furnished to one Party by the other, and which are the property of such Party pursuant to the terms and provisions of Section 5.1, above, shall remain the property of such Party.

As requested by Discloser, Recipient shall: (i) promptly return all tangible materials of Discloser, together with any copies thereof; (ii) purge or destroy all electronic and hardcopies containing Discloser's Confidential Information; and (iii) certify in writing as to Recipient's fulfillment of such Discloser request. Notwithstanding the foregoing, the Receiving Party may retain one archival copy of work product and deliverables containing the Disclosing Party's Confidential Information, subject to the provisions of this Agreement, solely for internal administrative purposes, including legal requirements such as regulatory compliance and enforcement of this Agreement.

6. No License or Representations. No license to a Party of any trademark, patent, copyright, mask work protection right or any other intellectual property right is either granted or implied by this Agreement or any disclosure hereunder, including, but not limited to, any license to make, use, import or sell any product embodying any Confidential Information. No representation, warranty or assurance is made by either Party with respect to the non-infringement of trademarks, patents, copyrights, mask protection rights or any other intellectual property rights or other rights of third persons.

7. No Warranty. All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding its accuracy or performance.

8. No Obligation. Neither this Agreement nor the disclosure or receipt of Confidential Information shall be construed as creating any obligation of a Party to furnish Confidential Information to the other Party or enter into any agreement or relationship with the other Party.

9. No Export. Neither Party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.



EARTHWATER

TECHNOLOGIES INC.

10. Term. This Agreement shall govern all communications between the Parties that are made during the period from the effective date of this Agreement to the date on which either Party receives from the other written notice that subsequent communications shall not be so governed; provided, however, that: (i) this Agreement shall be coextensive with any services agreement between the Parties; and (ii) each Party's obligations under Section 2 ("Nondisclosure and Nonuse Obligation") with respect to Discloser's Confidential Information that it has previously received shall continue for a period of five (5) years following execution of this Agreement or following termination of any other agreement between the Parties to which the terms of this Agreement apply, unless terminated pursuant to Section 3 ("Exclusions from Nondisclosure and Nonuse Obligations"). Thereafter, the Parties' obligations hereunder survive and continue in effect with respect to any information that continues to be a trade secret under applicable law.

11. Injunctive Relief. A breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to the non-breaching Party for which there will be no adequate remedy at law, and the non-breaching Party shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate). In the event the non-breaching Party retains an attorney to assert a claim for any damages pursuant to this Agreement, the breaching Party agrees to pay all reasonable attorneys' fees and expenses incurred by the non-breaching Party related to enforcement of the non-breaching Party's rights or remedies hereunder, whether or not suit is brought.

General Provisions

12. Governing Law and Forum. This Agreement is made under and shall be governed and construed in accordance with the internal laws (excluding conflicts of laws principles) of the State of New York as such laws are applied to agreements entered into and to be performed entirely within New York between New York residents except that no provision shall be strictly construed against a Party merely because it drafted the provision. Notwithstanding the foregoing, any claim for preliminary injunctive relief or other pre-judgment remedies may be brought in any state or federal court in the United States with proper jurisdiction.

13. Severability. If any provision of this Agreement is judged invalid or unenforceable, the defective provision shall first be revised, limited or amended, consistent with the general intent of the provision, such that it is valid and enforceable, and the remaining provisions of this Agreement shall be unaffected and shall remain enforceable.

14. Waiver. The failure of either Party to require strict compliance with any term of this agreement shall not be deemed to be a waiver of that or any other term of this Agreement.

15. Entire Agreement. This Agreement sets forth the entire understanding and agreement between the Parties relating to the subject matter herein and may be amended only in a writing signed by both Parties.

16. Transfer or Assignment. This Agreement shall be binding upon the Parties' respective successors and permitted assigns. A Party may neither transfer nor assign this Agreement nor any of its rights or obligations hereunder without the prior written consent of the other Party, which consent may be withheld by a Party in its sole discretion.



EARTHWATER TECHNOLOGIES INC.

17. **Counterparts; Electronic Signature.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Further, this Agreement may be executed by transfer of an originally signed document by facsimile or e-mail in PDF format, each of which shall be as fully binding as an original document.

18. **Notices.** Any notice or other communication made or given by either Party in connection with this Agreement shall be sent registered or certified mail, postage prepaid, return receipt requested, or by commercially acceptable courier service to the Parties' respective address shown above.

19. **Authorization.** The individuals signing below represent and warrant that they are authorized to sign on behalf of the respective Parties and to bind those Parties to the terms of this Agreement.

IN WITNESS WHEREOF, each Party, acting with proper authority, has executed this Agreement as of the date first written above.

DISCLOSING PARTY: Earthwater Technologies Inc.

By:

Name:

Robert Bisson

Address:

100 N Pitt St, Suite 307
Alexandria, VA 22314

RECEIVING PARTY:

POWER 7

By:

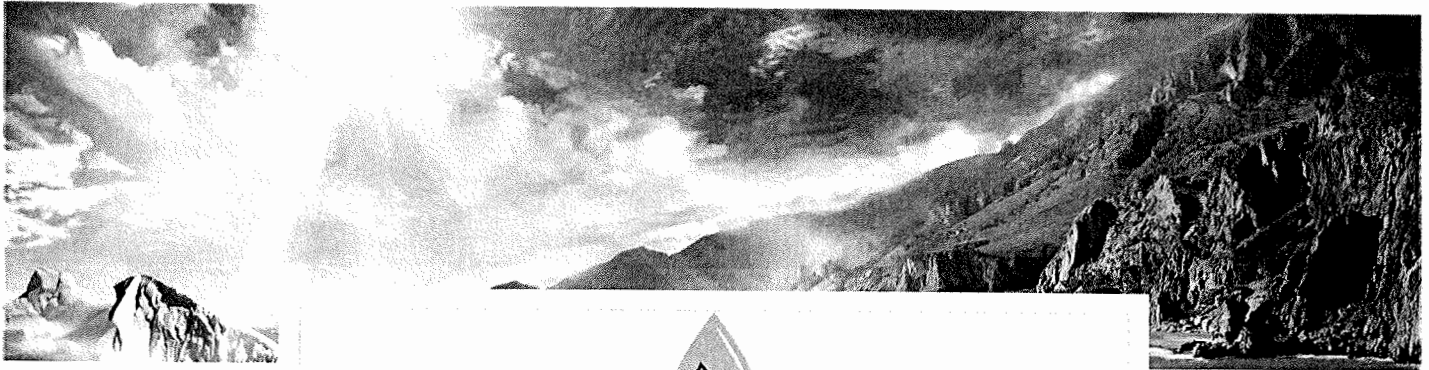
Name:

KEVIN MULHOLLAND

Address:

1 STORYTELLING ROCK ROAD

WOLFEBORO, NH. 03894

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POWER 7

Megawatershed™ Corporation

Power 7 leverages proprietary scientific techniques to discover, develop, and produce previously undiscovered Megawatershed™ fresh water resources. Environmentally friendly, renewable, and sustainable water resources are realized with relatively short time-to-market.

ENVIRONMENTALLY-FRIENDLY AND SUSTAINABLE

Successful Megawatershed projects have been producing water at predicted volumes for more than 30 years.

POWER 7

Megawatershed™ Corporation

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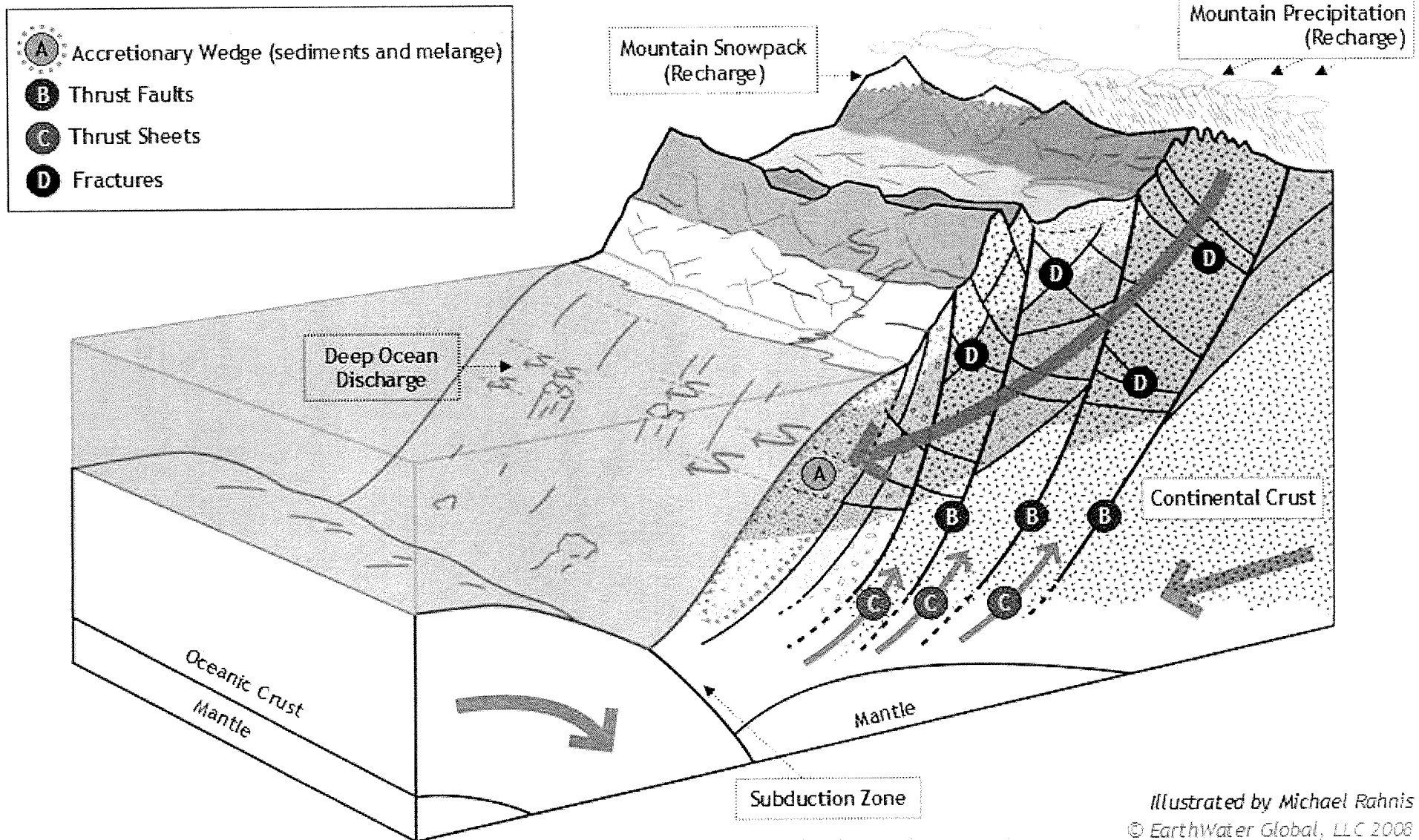


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Megawatershed™ Components





Global Water Crisis

Global Water Crisis

The Issue is well documented and self education can begin, on a macro level, at the World Bank website. In a glimpse:

- More than 2-billion people struggle to survive without access to clean water
- More than 3.5-million people die each year, as a result of water-related issues
- Industrial operations, and poor sanitation impact limited fresh water supplies
- Urbanization rates (9% CAGR) stress infrastructure and water management resources
- Infrastructure maintenance, development, and expansion project timelines are lagging behind the demand

The Solution: Power 7 utilizes advanced technologies and multi-disciplined scientific expertise to achieve cost-effective, environmentally friendly, renewable and sustainable solutions through MegaWatershed exploration and development.

Power 7 solutions provide decision space to customers; enabling measured, comprehensive, and timely resolution of issues; proactively managing risk and uncertainty.

- Service markets with the greatest need
- Enable economic growth through access to reliable water supplies
- Maximize social enterprise value of access to sustainable water supplies

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MegaWatershed™ Exploration

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Megawatershed™ resources

Megawatershed™ resources flow through deep, interconnected fractures ("fast paths") that transmit water over great distances (hundreds to thousands of kilometers), ultimately discharging into the ocean. These fractures are recharged via precipitation events, providing a predictable, sustainable, and environmentally friendly water source.

Megawatershed™ resources have limited exposure to these pollutants and, due to the flow rate of these "fast path" fractures, have a lower concentration of total dissolved solids.

Further complicating the issue of fresh water supplies is the seasonal impact of **climate change**. Though the annual average precipitation rates have remained fairly constant, the physical state and quantity of water involved in each precipitation event has changed. Instead of precipitation falling coming down as snow, it is coming down as rain. Instead of coming down in manageable volume, heavy precipitation events cause runoff and flooding issues. Man-made storm water runoff infrastructure capacity is not designed to maximize the capture of water during these events. Regardless of one's view on the causes of climate change, the visible and tangible impacts can be seen in the ever-retreating water lines in some of our most critical snow packs, aquifers, lakes, and tributaries. However, there is a solution that can help - **Megawatershed™ exploration and development**.

Megawatershed™ resources are recharged during each precipitation event.

- Average precipitation rates provide a benchmark for perpetual Megawatershed™ capacity and recharge rates
- Megawatershed™ resource output can be managed to ensure a consistent water production capability
- Environmental impacts of Megawatershed™ wells are not significant, relative to other water production options
- Capital and operating expenses associated with Megawatershed™ wells are a fraction of what other solutions cost

Megawatershed™ resources are distinctly differentiated from all other water resources and have the potential to responsibly address stakeholder concerns, while avoiding conflict with current water right issues.

Power 7 provides targeted services within multiple verticals, enabling sustainable projects to transition from concept to reality.

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Our Mission

The mission of Power 7 is to provide Megawatershed™ resources to water-poor and water-starved markets.

The Power 7 Team leverages proprietary scientific techniques to discover, develop, and produce previously undiscovered fresh water resources. Environmentally friendly, renewable, and sustainable water resources are realized with relatively short time-to-market.

Water is a basic human need and is a requirement for stability and economic growth. The Power 7 Team is focused on maximizing the social enterprise value completed projects to assist in easing the stresses of water-related issues and enable customers to focus on the future.

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The Solution

Paradigm Shift Needed in Water Crisis Solutions

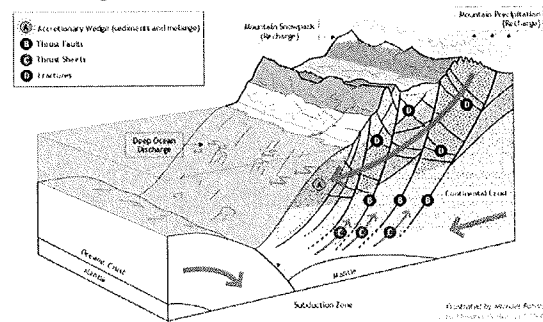
Issue. Lack of access to safe, reliable, and economically viable water supplies increases the vulnerability of water-poor and water-starved markets to unrest and instability.

Solution. Apply state-of-the-art technologies used in mineral exploration to locate and access previously undiscovered water resources. Megawatershed™ exploration and development applies these technologies to prove the existence of abundant water resources within water-poor and water-starved markets.

Analogy. Energy experts believed the world would run out of oil by the turn of the century. Deployment of new technologies has revealed the abundance of oil and improved methods for extraction.

Discussion. Food, water, and shelter comprise most basic human needs. However, approximately 1.1-billion people, half of the developing world's population, lack access to clean and reliable water sources. Approximately 1.6-million people die each year from diseases attributable to a lack of access to clean water; 90% of these fatalities are in children under the age of 5. Crop production is inhibited by a lack of irrigation water. The growing global population increases pressure on food production. Reliable, economical, and environmentally friendly water production is a requirement for national security and public health. Typical "solutions" are capital-intensive, commonly unaffordable to developing nations, and environmentally invasive: desalination plants, dams, reservoirs, pipelines and aqueduct systems.

Megawatershed™ Components



Background. For more than 40 years, Mr. Robert Bisson has successfully applied Megawatershed™ resource exploration and development techniques to develop municipal, industrial, and agricultural watersupplies. Megawatershed™ resources are found in deep bedrock fractures, created by the movement of tectonic plates. The existence of these fractures is widely known to the geoscience community. However, the importance of these fractures, and their role in the transmission and storage of enormous volumes of groundwater, is not widely known. These deep bedrock fractures transmit water over long distances (hundreds to thousands of kilometers) and over large geographic areas (across international boundaries). Importantly, these interconnected fractures ("fast paths") contain distinctly separate groundwater resources, relative to traditional aquifers, and are renewed through the natural water cycle.

It is commonly understood that water is a non-compressible liquid that his highly soluble and seeks the lowest possible elevation level. Each time a precipitation event occurs, water flows downhill until it is captured (lakes, dams, reservoirs, catchments) or until it flows into the ocean. Most readily familiar surface flows are rivers and storm water runoff. However, a significant percentage of precipitation flows into fracture systems; effectively "recharging" them with fresh water. Gravity forces fresh water flows through these Megawatershed™ "fast path" systems and ultimately discharges the water into the ocean via submarine groundwater discharge.

Because Megawatershed™ fracture systems are not considered in traditional water balance calculations, specifically the occurrence of "through flow" (see Megawatershed™ Components diagram, complements of the archives of Robert Bisson) current water models significantly underestimate the volume of available fresh groundwater. Precipitation volumes in recharge areas, feeding the deep fractured aquifers, are therefore underestimated. The accepted water balance equation is:

$$\text{Precipitation} = \text{Runoff} + (\text{Evaporation} + \text{Plant Transpiration}) + \text{Soil Storage}$$

The Megawatershed™ approach effectively re-balances the water equation, accounting for the through flow that occurs in consolidated fracture networks, and enables users to persistently access previously undiscovered water resources.

$$\text{Precipitation} = \text{Runoff} + \text{Through Flow} + (\text{Evaporation} + \text{Plant Transpiration}) + \text{Soil Storage}$$

The Megawatershed™ exploration process leverages advances in satellite imagery, geophysical exploration, and seismic drilling techniques. The capital and operational expenses are substantially less

precipitation and recharge during wetting periods, the capital and operational expenses are reduced (see Marginal Cost Table [source: Global Water Intelligence, April 2013, p. 33]). Wells are developed as close as possible to the end user, minimizing the costs of conveyance infrastructure and the energy required for pumping and delivery processes. Water remains underground until needed, limiting exposure to contaminants and bacterial blooming. Environmental impacts of the small well sites (similar in size to a natural gas well) are minimal, in comparison to dams, reservoirs, and pipelines. As well, there are no waste products; unlike desalination and wastewater recycling processes. Development of multiple wells distributes operational risk across a region; ensuring the single point failure of a single well does not negate the entire system. Sustainability is proven by the successful track record of multiple Megawatershed™ projects; delivering water at predicted volumes for more than 20 years.

Megawatershed™ exploration and development processes have advanced in lock step with technological advances in satellite imagery, multi-spectral analysis, and precision drilling. As a result, Mr. Bisson's methods have been further perfected by his collaborative work with Dr. Robert Walter. Using their proprietary scientific process, leveraging the cross-functional expertise of multiple disciplines, Megawatershed™ exploration and development occurs with a level of precision and accuracy that minimizes environmental impacts and maximizes success rates. Feasibility studies map macro-level Megawatershed™ indicators and provide valuable information to decision makers. Detailed exploration processes provide increasingly precise information to enable high confidence development planning operations.

The cost of Megawatershed™ resource development (Figure 2) in both capital and operational expense is relatively low. As well, enjoying a relatively short time-to-market, Megawatershed™ wells provide more expeditious and enduring solutions to local and regional water issues. Accurate modeling of precipitation and Megawatershed™ recharge rates enables sustainable long-term operations. For example, Megawatershed™ wells produced in northwest Somalia (1983-1986) have been producing approximately 2-million gallons of high-quality groundwater water per day. In Tobago (1999-2000), wells were created that have been producing 5-million gallons of high-quality groundwater per day. In Trinidad (2000-2002) Megawatershed™ resources were developed; producing 19-million gallons of high-quality groundwater per day. To date, these wells continue to produce water at their predicted rates.

In summary, Megawatershed™ wells provide an economical, enduring, and environmentally friendly solution to water supply issues in water-poor and water-starved markets. The commercially proven track record of successful Megawatershed™ projects, in some of the most austere and challenging locations, shows their incredible potential and enduring benefit. The relatively low capital and operational expenses associated with Megawatershed™ operations and expeditious time to market, combined with environmentally friendly and sustainable production practices, enables fiscally constrained markets to rapidly recover exploration and development costs. The intrinsic social enterprise value of Megawatershed™ resource development is undeniable. Providing sustainable water resources to water-poor and water-starved markets satisfies a critical requirement for stability and economic growth. Developing Megawatershed™ resources enables access to safe, reliable, and economically viable water supplies that decrease the vulnerability of water-poor and water-starved markets to unrest and instability.

Megawatershed™ exploration and development is the trademarked and patent-pending science of Power 7 Corporation. Additional information on Megawatershed™ exploration and development can be obtained by contacting Kevin Mulligan, Power 7 CEO, at k.mulligan@thepower7.com.

Solution	CAPEX / 10k m ³ / day	OPEX / 10k m ³ / day	Notes
Megawatershed Resources	\$1.11	\$0.05	10,000 m ³ /day @ depth of 500m
Shallow Freshwater Aquifer	\$3.60	\$0.01	10,000 m ³ /day @ depth of 10m
Deep Freshwater Aquifer	\$7.00	\$0.07	10,000 m ³ /day @ dept of 200m
Brackish Water Desalination	\$480	\$0.28	10,000 m ³ /day output cost comparison
Long Distance Transfer	\$15	\$0.008	10,000 m ³ /day with 500km long; 100m elevation
New Reservoir & Conveyance	\$68	\$0.004	10,000 m ³ /day with 25km conveyance
Indirect Potable Reuse	\$160	\$0.09	10,000 m ³ /day with UF, RO and UV; water returned to aquifer
Membrane Seawater Desalination	\$120	\$0.05	10,000 m ³ /day output cost comparison
Thermal Seawater Desalination	\$50	\$0.02	10,000 m ³ /day output cost comparison
Shipping Water by Bldder	\$40	\$1.50	10,000 m ³ /day bladder to port unloading 50km away
Shipping Water by Tanker	\$12	\$0.10	10,000 m ³ /day output cost comparison traveling 500km

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Megawatershed™ Exploration

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HILL WARD HENDERSON
ATTORNEYS AT LAW

WRITER'S E-MAIL: patrick.mosley@hwhlaw.com

WRITER'S DIRECT DIAL: (813) 222-8507

March 21, 2016

SENT VIA CERTIFIED U.S. MAIL

Robert Walter
233 Mary St.
Lancaster, PA 17603

Re: *Megawatershed and Power 7*

Dear Mr. Walter:

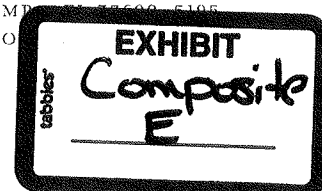
This firm represents BOF Earth Water LLC ("BOF"). On November 4, 2013, BOF loaned Earthwater Technologies, Inc. and Earthwater Resources, LLC (together, "Earthwater") certain funds for the development of water production and distribution capabilities. To secure this loan, Earthwater executed a Security Agreement dated November 4, 2013, which provided BOF with a lien and security interest in all of the assets of Earthwater, including all intellectual property and contracts with third parties. Pursuant to the Security Agreement, Earthwater irrevocably appointed BOF as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Earthwater to take any and all appropriate action to protect the assets, including intellectual property and contract rights.

As Earthwater's attorney-in-fact, I write to inform you that it has come to our attention that you have engaged in a pattern of serious inappropriate and unlawful activity in conjunction with your departure from Earthwater and your employment with Power 7, including theft of Earthwater's confidential and proprietary information it purchased from Robert Bisson.

On August 30, 2010, Mr. Bisson entered into an Assignment of Intellectual Property Agreement with Earthwater (the "IP Agreement"). In this IP Agreement, Mr. Bisson assigned to Earthwater all ideas, concepts, discoveries, inventions and other property relating to Earthwater's business, including the development and creation of intellectual property relating to the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. Mr. Bisson also specifically assigned to Earthwater the rights to use the term "Megawatershed". A copy of the IP Agreement is enclosed for your reference.

As you know, through your employment with Earthwater and association with Mr. Bisson, you learned Earthwater's confidential and trade secret information, including the concepts and property Mr. Bisson assigned to Earthwater. You gained access to and knowledge of this information solely through your employment with Earthwater.

Recently, Earthwater has discovered that you have become employed by Power 7 and, in the process, engaged in an effort to pirate Earthwater's confidential information and trade secrets, including but not limited to the exploration and production of groundwater from



March 21, 2016

Page 2 of 3

fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development.

This conduct is a very serious matter that cannot be tolerated, and exposes you to several potential legal claims, including but not limited to, misappropriation of trade secrets, civil theft, breach of fiduciary duty, and breach of duty of loyalty.

As I hope you can appreciate, your misconduct must be immediately addressed. Accordingly, we hereby demand the following:

- 1) That you immediately cease and desist any conduct that may further constitute misappropriation of trade secrets or theft of Earthwater property. Specifically, you shall cease and desist from use of the term "Megawatershed" and any processes or practices associated with the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. Further, you shall not use or disclose to any person or entity any trade secrets and other company information and documents you have taken or acquired, and shall provide written assurance that you will not use or disclose any trade secret information in the future. If you have already made such disclosures, please provide the name and contact information of each person or entity to which each disclosure was made, the date of each disclosure, and a detailed description of the information and/or documents disclosed so we can ensure the retrieval of all materials and information disclosed;
- 2) That you and/or Power 7 immediately cease and desist any attempts to trademark the term "Megawatershed" or any processes or practices associated with the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. To the extent you and/or Power 7 has already applied for or received a trademark on these terms, processes, or practices, please notify us of the application status or registration so we can oppose the application or cancel the registration;
- 3) That you return all Earthwater property that is in your possession or under your control. Such property includes, but is not limited to, print outs of any information or documents you received from Earthwater, and all other records, documents, files, information, processes, practices, or other confidential or proprietary information in your possession or under your control;
- 4) That, to that end, you refrain from moving, altering, or concealing or attempting to move, alter or conceal any information, files or documents it has misappropriated. Specifically, we demand that you not delete or attempt to delete any Earthwater information, files, or documents from its computers, any electronic storage device (disk, thumb drive, hard drive, PDA, or any other device) or from any personal, work, or other e-mail accounts to which you sent or received Earthwater information or documents.

If you refuse to comply with any of the above demands, we will assume that you do not intend to cooperate and will be forced to seek legal recourse. Such action would include, at a

March 21, 2016

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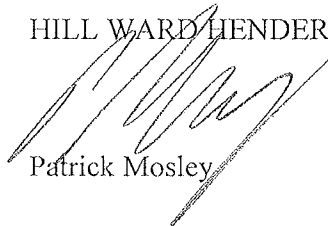
minimum, injunctive relief, disgorgement of profits, punitive damages, and reimbursement of all attorney's fees and costs expended concerning the above misconduct.

In the meantime, we will continue our investigation and will closely monitor your future conduct. If we determine that you commit further misconduct or if you fail to completely cooperate with all of the above demands, we will take all legal steps necessary to protect Earthwater and BOF's interests, enforce their rights, and procure all appropriate legal and equitable remedies. Further, in the event we learn that you have utilized or disclosed any of Earthwater's property in a competing or otherwise harmful nature, we will not hesitate to alert all parties involved that the confidential and proprietary information that they may be purchasing may be Earthwater's property. We reserve the right to file suit at any time based upon your conduct and breaches of which it is already aware.

Please govern yourself accordingly.

Sincerely,

HILL WARD HENDERSON

A handwritten signature in black ink, appearing to read "Patrick Mosley", is written over the typed name.

Patrick Mosley

Enclosures



HILL WARD HENDERSON
ATTORNEYS AT LAW

WRITER'S E-MAIL: patrick.mosley@hwlaw.com

WRITER'S DIRECT DIAL: (813) 222-8507

March 21, 2016

SENT VIA CERTIFIED U.S. MAIL

Candace Grandpre
402 W. Frederick St., Apt. 304
Lancaster, PA 17603

Re: *Megawatershed and Power 7*

Dear Ms. Grandpre:

This firm represents BOF Earth Water LLC ("BOF"). On November 4, 2013, BOF loaned Earthwater Technologies, Inc. and Earthwater Resources, LLC (together, "Earthwater") certain funds for the development of water production and distribution capabilities. To secure this loan, Earthwater executed a Security Agreement dated November 4, 2013, which provided BOF with a lien and security interest in all of the assets of Earthwater, including all intellectual property and contracts with third parties. Pursuant to the Security Agreement, Earthwater irrevocably appointed BOF as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Earthwater to take any and all appropriate action to protect the assets, including intellectual property and contract rights.

As Earthwater's attorney-in-fact, I write to inform you that it has come to our attention that you have committed a host of violations of your restrictive covenants contained in your Employment Agreement with Earthwater, including theft of Earthwater's confidential and proprietary information it purchased from Robert Bisson.

On August 30, 2010, Mr. Bisson entered into an Assignment of Intellectual Property Agreement with Earthwater (the "IP Agreement"). In this IP Agreement, Mr. Bisson assigned to Earthwater all ideas, concepts, discoveries, inventions and other property relating to Earthwater's business, including the development and creation of intellectual property relating to the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. Mr. Bisson also specifically assigned to Earthwater the rights to use the term "Megawatershed". A copy of the IP Agreement is enclosed for your reference.

Moreover, as you know, you worked for Earthwater until late 2015. In connection your employment, you executed an Employment Agreement on December 1, 2013. I have enclosed copies of your Employment Agreement with this letter. Specifically, Section 1 of Exhibit A of your Employment Agreement states in pertinent part:

I agree at all times during the term of my employment and thereafter, to hold in the strictest confidence, and not to use, except for the benefit of the Company to fulfill my employment obligations, or to disclose to any person, firm or corporation without

March 21, 2016

Page 2 of 4

written authorization of a duly authorized officer of the Company, any Confidential Information of the Company.

In sum, this Section prohibits you from using or distributing Earthwater's confidential information, which includes any information relating to Megawatershed which is lawfully purchased and owned by Earthwater.

Further, Section 4 of Exhibit A of your Employment Agreement provides:

I agree that, for a period of three (3) years immediately following the termination of my relationship with the Company for any reason, whether with or without cause, I will not conduct, be employed by, carry on or participate in, in any manner that requires technical skill or knowledge, or have any ownership interest or contingent ownership interest in, any business which competes with or is attempting to compete with the business as then conducted by the Company related to the development of new groundwater resources.

In short, this Section of your Employment Agreement prohibits you from providing services to any business that competes with Earthwater relating to the development of groundwater resources.

Finally, Section 8 of Exhibit A of your Employment Agreement provides:

I agree that for a period of three (3) years immediately following the termination of my relationship with the Company for any reason, whether with or without cause, I will not either directly or indirectly solicit, induce or encourage any of the Company's customers to become a customer of any other person, entity, business, or corporation that competes with or is attempting to compete with the Business of the Company.

In short, this Section of your Employment Agreement prohibits your from soliciting Earthwater's clients.

Recently, Earthwater has discovered that you have become employed by Power 7 and, in the process, have committed multiple breaches of the foregoing restrictive covenants and theft of Earthwater's property. Specifically, you are working for a direct competitor of Earthwater, using Earthwater's confidential and proprietary information in the course of your employment with Power 7, including Megawatershed processes and methods, and improperly soliciting multiple customers and vendors of Earthwater.

This conduct is a very serious matter that cannot be tolerated, and exposes you to several potential legal claims, including but not limited to, misappropriation of trade secrets, civil theft, breach of your restrictive covenants, breach of fiduciary duty, and breach of duty of loyalty.

As I hope you can appreciate, your misconduct must be immediately addressed. Accordingly, we hereby demand the following:

1) That you immediately cease and desist any conduct that may further constitute misappropriation of trade secrets, theft of Earthwater property, or breach of your Employment Agreement. Specifically, you shall cease and desist from use of the term "Megawatershed" and any processes or practices associated with the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. Further, you shall not use or disclose to any person or entity any trade secrets and other company information and documents you have taken or acquired, and shall provide written assurance that you will not use or disclose any trade secret information in the future. If you have already made such disclosures, please provide the name and contact information of each person or entity to which each disclosure was made, the date of each disclosure, and a detailed description of the information and/or documents disclosed so we can ensure the retrieval of all materials and information disclosed;

2) That you and/or Power 7 immediately cease and desist any attempts to trademark the term "Megawatershed" or any processes or practices associated with the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. To the extent you and/or Power 7 has already applied for or received a trademark on these terms, processes, or practices, please notify us of the application status or registration so we can oppose the application or cancel the registration;

3) That you return all Earthwater property that is in your possession or under your control. Such property includes, but is not limited to, print outs of any information or documents you received from Earthwater, and all other records, documents, files, information, processes, practices, or other confidential or proprietary information in your possession or under your control;

4) That, to that end, you refrain from moving, altering, or concealing or attempting to move, alter or conceal any information, files or documents it has misappropriated. Specifically, we demand that you not delete or attempt to delete any Earthwater information, files, or documents from its computers, any electronic storage device (disk, thumb drive, hard drive, PDA, or any other device) or from any personal, work, or other e-mail accounts to which you sent or received Earthwater information or documents.

If you refuse to comply with any of the above demands, we will assume that you do not intend to cooperate and will be forced to seek legal recourse. Such action would include, at a minimum, injunctive relief, disgorgement of profits, punitive damages, and reimbursement of all attorney's fees and costs expended concerning the above misconduct.

In the meantime, we will continue our investigation and will closely monitor your future conduct. If we determine that you commit further misconduct or if you fail to completely cooperate with all of the above demands, we will take all legal steps necessary to protect Earthwater and BOF's interests, enforce their rights, and procure all appropriate legal and equitable remedies. Further, in the event we learn that you have utilized or disclosed any of Earthwater's property in a competing or otherwise harmful nature, we will not hesitate to alert all parties involved that the confidential and proprietary information that they may be purchasing

March 21, 2016

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may be Earthwater's property. We reserve the right to file suit at any time based upon your conduct and breaches of which it is already aware.

Finally, please note that we provided a copy of your Employment Agreement to Power 7, your new employer, to ensure that it is aware of the restrictive covenants in your Employment Agreement and to request that it ensures that you do not violate these restrictive covenants.

Please govern yourself accordingly.

Sincerely,

HILL WARD HENDERSON

Patrick Mosley

Enclosures



HILL WARD HENDERSON
ATTORNEYS AT LAW

WRITER'S E-MAIL: patrick.mosley@hwhlaw.com

WRITER'S DIRECT DIAL: (813) 222-8507

March 21, 2016

SENT VIA CERTIFIED U.S. MAIL

Kevin Mulligan
Power 7
1 Storytelling Rock Road
Wolfeboro, NH 03894

Re: *Megawatershed and Earthwater Technologies, Inc.*

Dear Mr. Mulligan:

This firm represents BOF Earth Water LLC ("BOF"). On November 4, 2013, BOF loaned Earthwater Technologies, Inc. and Earthwater Resources, LLC (together, "Earthwater") certain funds for the development of water production and distribution capabilities. To secure this loan, Earthwater executed a Security Agreement dated November 4, 2013, which provided BOF with a lien and security interest in all of the assets of Earthwater, including all intellectual property and contracts with third parties. Pursuant to the Security Agreement, Earthwater irrevocably appointed BOF as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Earthwater to take any and all appropriate action to protect the assets, including intellectual property and contract rights.

As Earthwater's attorney-in-fact, I write to inform you that it has come to our attention that Power 7 is using Earthwater's confidential trade secrets in violation of its Non-Disclosure and Confidentiality Agreement with Earthwater and misappropriation of trade secret laws. Notably, on August 30, 2010, Robert Bisson entered into an Assignment of Intellectual Property Agreement with Earthwater (the "IP Agreement"). In this IP Agreement, Mr. Bisson assigned to Earthwater all ideas, concepts, discoveries, inventions and other property relating to Earthwater's business, including the development and creation of intellectual property relating to the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. Mr. Bisson also specifically assigned to Earthwater the rights to use the term "Megawatershed". A copy of the IP Agreement is enclosed for your reference.

Moreover, on June 18, 2015, Power 7 entered into a Non-Disclosure and Confidentiality Agreement directly with Earthwater (the "Confidentiality Agreement"). In the Confidentiality Agreement, Power 7 agreed that, for a period of five years, Power 7 would not use or disclose any of Earthwater's confidential information. A copy of the Confidentiality Agreement is enclosed for your reference.

Power 7 is in violation of its Confidentiality Agreement with Earthwater, as well as improperly using Earthwater's confidential trade secret information lawfully purchased and assigned to Earthwater by Mr. Bisson. In fact, Power 7's website specifically references the term "Megawatershed", a term and process owned by Earthwater, and misrepresents to the public the

3700 BANK OF AMERICA PLAZA, 101 E KENNEDY BLVD, TAMPA, FL 33602-5195
TEL: 813-221-3900 FAX: 813-221-2900 WWW.HWHLAW.COM

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"Megawatershed" process is owned by and exclusive to Power 7. Further, Power 7 employs Robert Walter, a former Earthwater employee, who is specifically providing Power 7 with Earthwater's trade secrets and confidential information he learned solely from his employment at Earthwater. Therefore, on top of breaching the Confidentiality Agreement, Power 7's continuing misconduct constitutes misappropriation of trade secrets, direct theft of Earthwater property, and aiding and abetting theft of Earthwater property.

On a separate but related note, it has also come to our attention that Stacey Sosenko, Candace Grandpre, and Woldai Ghebreab, current employees of Power 7, have committed a host of violations of their restrictive covenants contained in their Employment Agreements with Earthwater.

Ms. Sosenko, Ms. Grandpre, and Mr. Ghebreab all worked for Earthwater until late 2015. In connection with their employment, they executed nearly identical Employment Agreements. I have enclosed copies of each of their Employment Agreements with this letter. Specifically, Section 1 of Exhibit A of the Employment Agreements states in pertinent part:

I agree at all times during the term of my employment and thereafter, to hold in the strictest confidence, and not to use, except for the benefit of the Company to fulfill my employment obligations, or to disclose to any person, firm or corporation without written authorization of a duly authorized officer of the Company, any Confidential Information of the Company.

In sum, this Section prohibits these individuals from using or distributing Earthwater's confidential information, which includes any information relating to Megawatershed which is lawfully purchased and owned by Earthwater.

Further, Section 4 of Exhibit A of the Employment Agreements provides:

I agree that, for a period of three (3) years immediately following the termination of my relationship with the Company for any reason, whether with or without cause, I will not conduct, be employed by, carry on or participate in, in any manner that requires technical skill or knowledge, or have any ownership interest or contingent ownership interest in, any business which competes with or is attempting to compete with the business as then conducted by the Company related to the development of new groundwater resources.

In short, this Section of the Employment Agreements prohibits the individuals from providing services to any business that competes with Earthwater relating to the development of groundwater resources.

Finally, Section 8 of Exhibit A of the Employment Agreements provides:

I agree that for a period of three (3) years immediately following the termination of my relationship with the Company for any reason, whether with or without cause, I will not either directly or indirectly solicit, induce or encourage any of the Company's customers to become a customer of any other person, entity, business,

or corporation that competes with or is attempting to compete with the Business of the Company.

In short, this Section of the Employment Agreements prohibits the individuals from soliciting Earthwater's clients.

Recently, Earthwater has discovered that Ms. Sosenko, Ms. Grandpre, and Mr. Ghebreab have all become employed by Power 7 and, in the process, have committed multiple breaches of the foregoing restrictive covenants. Specifically, these individuals are working for a direct competitor of Earthwater, used Earthwater's confidential and proprietary information in the course of their employment with Power 7, and improperly solicited multiple customers and vendors of Earthwater.

This conduct is a very serious matter that cannot be tolerated. Power 7 is engaging in improper tortious interference with Ms. Sosenko, Ms. Grandpre, and Mr. Ghebreab's Employment Agreements by employing these individuals, permitting the improper solicitations to occur, and permitting the use and disclosure of Earthwater's confidential information. To the extent Power 7 did not have knowledge of Ms. Sosenko, Ms. Grandpre, and Mr. Ghebreab's Employment Agreements with Earthwater, this letter will serve as notice of the Employment Agreements.

As I hope you can appreciate, Power 7's misconduct as well as the misconduct of its employees must be immediately addressed. Accordingly, we hereby demand the following:

1) That Power 7 immediately cease and desist any conduct that may further constitute misappropriation of trade secrets, theft of Earthwater property, aiding and abetting theft of Earthwater property, breach of the Confidentiality Agreement, or tortious interference with the Employment Agreements. Specifically, Power 7 shall cease and desist from use of the term "Megawatershed" and any processes or practices associated with the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. Further, Power 7 shall not use or disclose to any person or entity any trade secrets and other company information and documents it has taken or acquired, and shall provide written assurance that it will not use or disclose any trade secret information in the future. If Power 7 has already made such disclosures, please provide the name and contact information of each person or entity to which each disclosure was made, the date of each disclosure, and a detailed description of the information and/or documents disclosed so we can ensure the retrieval of all materials and information disclosed;

2) That Power 7 immediately cease and desist any attempts to trademark the term "Megawatershed" or any processes or practices associated with the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. To the extent Power 7 has already applied for or received a trademark on these terms, processes, or practices, please notify us of the application status or registration so we can oppose the application or cancel the registration;

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3) That Power 7 return all Earthwater property that is in its possession or under its control. Such property includes, but is not limited to, print outs of any information or documents Power 7 received from Earthwater or any previous Earthwater employee, and all other records, documents, files, information, processes, practices, or other confidential or proprietary information in its possession or under its control;

4) That, to that end, Power 7 refrain from moving, altering, or concealing or attempting to move, alter or conceal any information, files or documents it has misappropriated. Specifically, we demand that Power 7 not delete or attempt to delete any Earthwater information, files, or documents from its computers, any electronic storage device (disk, thumb drive, hard drive, PDA, or any other device) or from any personal, work, or other e-mail accounts to which it sent or received Earthwater information or documents.

If Power 7 refuses to comply with any of the above demands, we will assume that it does not intend to cooperate and will be forced to seek legal recourse. Such action would include, at a minimum, injunctive relief, disgorgement of profits, punitive damages, and reimbursement of all attorney's fees and costs expended concerning the above misconduct.

In the meantime, we will continue our investigation and will closely monitor Power 7, Mr. Walter, Ms. Sosenko, Ms. Grandpre, and Mr. Ghebreab's future conduct. If we determine that Power 7 or these individuals commit further misconduct or if they fail to completely cooperate with all of the above demands, we will take all legal steps necessary to protect Earthwater and BOF's interests, enforce their rights, and procure all appropriate legal and equitable remedies. Further, in the event we learn that Power 7, Mr. Walter, Ms. Sosenko, Ms. Grandpre, or Mr. Ghebreab has utilized or disclosed any of Earthwater's property in a competing or otherwise harmful nature, we will not hesitate to alert all parties involved that the confidential and proprietary information that they may be purchasing may be Earthwater's property. We reserve the right to file suit at any time based upon Power 7's conduct and breaches of which it is already aware.

Please govern yourself accordingly.

Sincerely,

HILL WARD HENDERSON



Patrick Mosley

Enclosures



HILL WARD HENDERSON
ATTORNEYS AT LAW

WRITER'S E-MAIL: patrick.mosley@hwhlaw.com

WRITER'S DIRECT DIAL: (813) 222-8507

March 21, 2016

SENT VIA CERTIFIED U.S. MAIL

Stacey Sosenko
625 E. Monroe Ave., Apt. 510
Alexandria, VA 22301

Re: *Megawatershed and Power 7*

Dear Ms. Sosenko:

This firm represents BOF Earth Water LLC ("BOF"). On November 4, 2013, BOF loaned Earthwater Technologies, Inc. and Earthwater Resources, LLC (together, "Earthwater") certain funds for the development of water production and distribution capabilities. To secure this loan, Earthwater executed a Security Agreement dated November 4, 2013, which provided BOF with a lien and security interest in all of the assets of Earthwater, including all intellectual property and contracts with third parties. Pursuant to the Security Agreement, Earthwater irrevocably appointed BOF as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Earthwater to take any and all appropriate action to protect the assets, including intellectual property and contract rights.

As Earthwater's attorney-in-fact, I write to inform you that it has come to our attention that you have committed a host of violations of your restrictive covenants contained in your Employment Agreement with Earthwater, including theft of Earthwater's confidential and proprietary information it purchased from Robert Bisson.

On August 30, 2010, Mr. Bisson entered into an Assignment of Intellectual Property Agreement with Earthwater (the "IP Agreement"). In this IP Agreement, Mr. Bisson assigned to Earthwater all ideas, concepts, discoveries, inventions and other property relating to Earthwater's business, including the development and creation of intellectual property relating to the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. Mr. Bisson also specifically assigned to Earthwater the rights to use the term "Megawatershed". A copy of the IP Agreement is enclosed for your reference.

Moreover, as you know, you worked for Earthwater until late 2015. In connection your employment, you executed an Employment Agreement on November 1, 2013. I have enclosed copies of your Employment Agreement with this letter. Specifically, Section 1 of Exhibit A of your Employment Agreement states in pertinent part:

I agree at all times during the term of my employment and thereafter, to hold in the strictest confidence, and not to use, except for the benefit of the Company to fulfill my employment obligations, or to disclose to any person, firm or corporation without

March 21, 2016

Page 2 of 4

written authorization of a duly authorized officer of the Company, any Confidential Information of the Company.

In sum, this Section prohibits you from using or distributing Earthwater's confidential information, which includes any information relating to Megawatershed which is lawfully purchased and owned by Earthwater.

Further, Section 4 of Exhibit A of your Employment Agreement provides:

I agree that, for a period of three (3) years immediately following the termination of my relationship with the Company for any reason, whether with or without cause, I will not conduct, be employed by, carry on or participate in, in any manner that requires technical skill or knowledge, or have any ownership interest or contingent ownership interest in, any business which competes with or is attempting to compete with the business as then conducted by the Company related to the development of new groundwater resources.

In short, this Section of your Employment Agreement prohibits you from providing services to any business that competes with Earthwater relating to the development of groundwater resources.

Finally, Section 8 of Exhibit A of your Employment Agreement provides:

I agree that for a period of three (3) years immediately following the termination of my relationship with the Company for any reason, whether with or without cause, I will not either directly or indirectly solicit, induce or encourage any of the Company's customers to become a customer of any other person, entity, business, or corporation that competes with or is attempting to compete with the Business of the Company.

In short, this Section of your Employment Agreement prohibits your from soliciting Earthwater's clients.

Recently, Earthwater has discovered that you have become employed by Power 7 and, in the process, have committed multiple breaches of the foregoing restrictive covenants and theft of Earthwater's property. Specifically, you are working for a direct competitor of Earthwater, using Earthwater's confidential and proprietary information in the course of your employment with Power 7, including Megawatershed processes and methods, and improperly soliciting multiple customers and vendors of Earthwater.

This conduct is a very serious matter that cannot be tolerated, and exposes you to several potential legal claims, including but not limited to, misappropriation of trade secrets, civil theft, breach of your restrictive covenants, breach of fiduciary duty, and breach of duty of loyalty.

As I hope you can appreciate, your misconduct must be immediately addressed. Accordingly, we hereby demand the following:

1) That you immediately cease and desist any conduct that may further constitute misappropriation of trade secrets, theft of Earthwater property, or breach of your Employment Agreement. Specifically, you shall cease and desist from use of the term "Megawatershed" and any processes or practices associated with the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. Further, you shall not use or disclose to any person or entity any trade secrets and other company information and documents you have taken or acquired, and shall provide written assurance that you will not use or disclose any trade secret information in the future. If you have already made such disclosures, please provide the name and contact information of each person or entity to which each disclosure was made, the date of each disclosure, and a detailed description of the information and/or documents disclosed so we can ensure the retrieval of all materials and information disclosed;

2) That you and/or Power 7 immediately cease and desist any attempts to trademark the term "Megawatershed" or any processes or practices associated with the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. To the extent you and/or Power 7 has already applied for or received a trademark on these terms, processes, or practices, please notify us of the application status or registration so we can oppose the application or cancel the registration;

3) That you return all Earthwater property that is in your possession or under your control. Such property includes, but is not limited to, print outs of any information or documents you received from Earthwater, and all other records, documents, files, information, processes, practices, or other confidential or proprietary information in your possession or under your control;

4) That, to that end, you refrain from moving, altering, or concealing or attempting to move, alter or conceal any information, files or documents it has misappropriated. Specifically, we demand that you not delete or attempt to delete any Earthwater information, files, or documents from its computers, any electronic storage device (disk, thumb drive, hard drive, PDA, or any other device) or from any personal, work, or other e-mail accounts to which you sent or received Earthwater information or documents.

If you refuse to comply with any of the above demands, we will assume that you do not intend to cooperate and will be forced to seek legal recourse. Such action would include, at a minimum, injunctive relief, disgorgement of profits, punitive damages, and reimbursement of all attorney's fees and costs expended concerning the above misconduct.

In the meantime, we will continue our investigation and will closely monitor your future conduct. If we determine that you commit further misconduct or if you fail to completely cooperate with all of the above demands, we will take all legal steps necessary to protect Earthwater and BOF's interests, enforce their rights, and procure all appropriate legal and equitable remedies. Further, in the event we learn that you have utilized or disclosed any of Earthwater's property in a competing or otherwise harmful nature, we will not hesitate to alert all parties involved that the confidential and proprietary information that they may be purchasing

March 21, 2016
Page 4 of 4

may be Earthwater's property. We reserve the right to file suit at any time based upon your conduct and breaches of which it is already aware.

Finally, please note that we provided a copy of your Employment Agreement to Power 7, your new employer, to ensure that it is aware of the restrictive covenants in your Employment Agreement and to request that it ensures that you do not violate these restrictive covenants.

Please govern yourself accordingly.

Sincerely,

HILL WARD HENDERSON

Patrick Mosley

Enclosures



HILL WARD HENDERSON
ATTORNEYS AT LAW

WRITER'S E-MAIL: patrick.mosley@hwlaw.com

WRITER'S DIRECT DIAL: (813) 222-8507

March 21, 2016

SENT VIA CERTIFIED U.S. MAIL

Woldai Ghebreab
756 Ronson Ave.
Columbus, OH 43230

Re: *Megawatershed and Power 7*

Dear Mr. Ghebreab:

This firm represents BOF Earth Water LLC ("BOF"). On November 4, 2013, BOF loaned Earthwater Technologies, Inc. and Earthwater Resources, LLC (together, "Earthwater") certain funds for the development of water production and distribution capabilities. To secure this loan, Earthwater executed a Security Agreement dated November 4, 2013, which provided BOF with a lien and security interest in all of the assets of Earthwater, including all intellectual property and contracts with third parties. Pursuant to the Security Agreement, Earthwater irrevocably appointed BOF as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Earthwater to take any and all appropriate action to protect the assets, including intellectual property and contract rights.

As Earthwater's attorney-in-fact, I write to inform you that it has come to our attention that you have committed a host of violations of your restrictive covenants contained in your Employment Agreement with Earthwater, including theft of Earthwater's confidential and proprietary information it purchased from Robert Bisson.

On August 30, 2010, Mr. Bisson entered into an Assignment of Intellectual Property Agreement with Earthwater (the "IP Agreement"). In this IP Agreement, Mr. Bisson assigned to Earthwater all ideas, concepts, discoveries, inventions and other property relating to Earthwater's business, including the development and creation of intellectual property relating to the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. Mr. Bisson also specifically assigned to Earthwater the rights to use the term "Megawatershed". A copy of the IP Agreement is enclosed for your reference.

Moreover, as you know, you worked for Earthwater until late 2015. In connection your employment, you executed an Employment Agreement on November 1, 2012. I have enclosed copies of your Employment Agreement with this letter. Specifically, Section 1 of Exhibit A of your Employment Agreement states in pertinent part:

I agree at all times during the term of my employment and thereafter, to hold in the strictest confidence, and not to use, except for the benefit of the Company to fulfill my employment obligations, or to disclose to any person, firm or corporation without

written authorization of a duly authorized officer of the Company, any Confidential Information of the Company.

In sum, this Section prohibits you from using or distributing Earthwater's confidential information, which includes any information relating to Megawatershed which is lawfully purchased and owned by Earthwater.

Further, Section 4 of Exhibit A of your Employment Agreement provides:

I agree that, for a period of three (3) years immediately following the termination of my relationship with the Company for any reason, whether with or without cause, I will not conduct, be employed by, carry on or participate in, in any manner that requires technical skill or knowledge, or have any ownership interest or contingent ownership interest in, any business which competes with or is attempting to compete with the business as then conducted by the Company related to the development of new groundwater resources.

In short, this Section of your Employment Agreement prohibits you from providing services to any business that competes with Earthwater relating to the development of groundwater resources.

Finally, Section 8 of Exhibit A of your Employment Agreement provides:

I agree that for a period of three (3) years immediately following the termination of my relationship with the Company for any reason, whether with or without cause, I will not either directly or indirectly solicit, induce or encourage any of the Company's customers to become a customer of any other person, entity, business, or corporation that competes with or is attempting to compete with the Business of the Company.

In short, this Section of your Employment Agreement prohibits your from soliciting Earthwater's clients.

Recently, Earthwater has discovered that you have become employed by Power 7 and, in the process, have committed multiple breaches of the foregoing restrictive covenants and theft of Earthwater's property. Specifically, you are working for a direct competitor of Earthwater, using Earthwater's confidential and proprietary information in the course of your employment with Power 7, including Megawatershed processes and methods, and improperly soliciting multiple customers and vendors of Earthwater.

This conduct is a very serious matter that cannot be tolerated, and exposes you to several potential legal claims, including but not limited to, misappropriation of trade secrets, civil theft, breach of your restrictive covenants, breach of fiduciary duty, and breach of duty of loyalty.

As I hope you can appreciate, your misconduct must be immediately addressed. Accordingly, we hereby demand the following:

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1) That you immediately cease and desist any conduct that may further constitute misappropriation of trade secrets, theft of Earthwater property, or breach of your Employment Agreement. Specifically, you shall cease and desist from use of the term "Megawatershed" and any processes or practices associated with the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. Further, you shall not use or disclose to any person or entity any trade secrets and other company information and documents you have taken or acquired, and shall provide written assurance that you will not use or disclose any trade secret information in the future. If you have already made such disclosures, please provide the name and contact information of each person or entity to which each disclosure was made, the date of each disclosure, and a detailed description of the information and/or documents disclosed so we can ensure the retrieval of all materials and information disclosed;

2) That you and/or Power 7 immediately cease and desist any attempts to trademark the term "Megawatershed" or any processes or practices associated with the exploration and production of groundwater from fractured and bedrock formations, the sustainable discharge and recharge of aquifers, and economic and business models relating to such development. To the extent you and/or Power 7 has already applied for or received a trademark on these terms, processes, or practices, please notify us of the application status or registration so we can oppose the application or cancel the registration;

3) That you return all Earthwater property that is in your possession or under your control. Such property includes, but is not limited to, print outs of any information or documents you received from Earthwater, and all other records, documents, files, information, processes, practices, or other confidential or proprietary information in your possession or under your control;

4) That, to that end, you refrain from moving, altering, or concealing or attempting to move, alter or conceal any information, files or documents it has misappropriated. Specifically, we demand that you not delete or attempt to delete any Earthwater information, files, or documents from its computers, any electronic storage device (disk, thumb drive, hard drive, PDA, or any other device) or from any personal, work, or other e-mail accounts to which you sent or received Earthwater information or documents.

If you refuse to comply with any of the above demands, we will assume that you do not intend to cooperate and will be forced to seek legal recourse. Such action would include, at a minimum, injunctive relief, disgorgement of profits, punitive damages, and reimbursement of all attorney's fees and costs expended concerning the above misconduct.

In the meantime, we will continue our investigation and will closely monitor your future conduct. If we determine that you commit further misconduct or if you fail to completely cooperate with all of the above demands, we will take all legal steps necessary to protect Earthwater and BOF's interests, enforce their rights, and procure all appropriate legal and equitable remedies. Further, in the event we learn that you have utilized or disclosed any of Earthwater's property in a competing or otherwise harmful nature, we will not hesitate to alert all parties involved that the confidential and proprietary information that they may be purchasing

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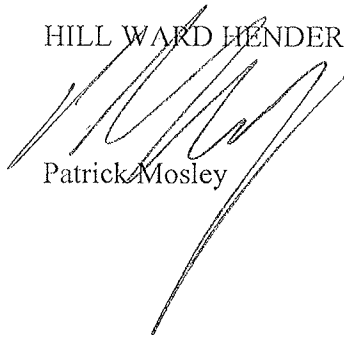
may be Earthwater's property. We reserve the right to file suit at any time based upon your conduct and breaches of which it is already aware.

Finally, please note that we provided a copy of your Employment Agreement to Power 7, your new employer, to ensure that it is aware of the restrictive covenants in your Employment Agreement and to request that it ensures that you do not violate these restrictive covenants.

Please govern yourself accordingly.

Sincerely,

HILL WARD HENDERSON

A handwritten signature in black ink, appearing to read 'Patrick Mosley', is written over the typed name. The signature is stylized with a large, sweeping 'P' and 'M'.

Patrick Mosley

Enclosures